58.

SUPREME COURT OF THE UNITED STATES.

No. 67.

WILLIAM KING, COMPLAINANT AND APPELLANT,

VERSUS

JAMES WHITE.

ON APPEAL FROM THE DISTRICT COURT OF THE U. S. FOR THE DISTRICT OF WESTERN VIRGINIA.

	Original.	Print.
Bill of complaint by William King	1	3
Answer of James White	9	9
Amended bill of William King	16	15
Amended answer of James White to amended bill	23	21
Decree dismissing bill; appeal to Supreme Court United States	30	26
Exhibit A, William King's will, referred to in bill of complaint	30	26
B, James King's will	32	28
C, King and White's agreement	35	30
D, Order of court	37	31
Lewis's endorsement, referred to in original answer	38	32
Claiborne's do. do. do	38	32
Receipts do. do	38	32
Confirmation of agreement do. do	39	32
Additional contract do. do	39	33
White's affidavit, referred to in bill and answer	40	33
Deposition of Thomas Claiborne	41	34
2d do. do	50	40
1st deposition of John H. Lewis	54	43
2d do. do	59	47
Claiborne's letter, referred to by Lewis	65	51
Deposition of Ann C. Goode	67	52
John Goode	68	53
2d do	72	55
Charles J. Love	78	59
John Shute and John Thompson	79	60
James L. White	80	60
William A. Preston	83	62
B. Estill	84	63
Transcript of record, Samuel King et al. *vs.* William King's representatives	94	69
"The receiver case;" White and others *vs.* Henderson and others	140	99
Transcript of record, "Fulton *vs.* Trigg's executors"	193	137

Deposition of Alexander Findlay....198....141
Francis Smith....198....141
Luke Lea....200....142
Daniel B. Turner....201....143
Benjamin Patterson....202....144
Captain Francis Smith....203....144
John M. Preston....208....148
Doct. E. B. Clapp....211....150
Robert Woods and B. Richmond....212....151
Harold Smyth and John P. Matthews....215....152
General Francis Preston....216....153
Benjamin Estill....217....154
Benjamin Pattison....219....155
James Fulton....220....156
John H. Fulton....224....158
Do....225....159
Receipt of Alexander Fulton....226....159
Affidavit of James White....226....160
G. Kent....227....160
C. G. Gardner....228....161
A. D. Veitch....228....161
S. S. Ewing....229....162
Francis Smith....229....162
A. D. Veitch....230....162
S. S. Ewing....230....163
James Fulton and C. Boyles....232....164
S. E. Gilliland....233....165
Transcript of "McCall and others *vs.* White and others"....236....166
"James White *vs.* Wm. Heiskell et ux."....259....180
Appeal bond....297....206
Clerk's certificate....297....206

At a district court of the United States for the western district of Virginia, continued and held at Wythe court-house, on Friday, the 24th day of September, in the year of Christ eighteen hundred and thirty—Present, the Honorable Alexander Caldwell, Judge.

Be it remembered, that heretofore, to wit, on the 13th day of August, one thousand eight hundred and twenty-seven, came William King, and sued out of the clerk's office of said court the United States' writ of subpœna against James White; which writ, with the acknowledgment of the service thereof, and marshal's return, are in the words and figures following:

The President of the United States of America to the marshal of the western district of Virginia, greeting:

You are hereby commanded to summon James White, a citizen and inhabitant of the State of Virginia, and of the judicial district aforesaid, to appear before the Judge of the court of the United States for the western district of Virginia, at Wythe court-house, on the first day of the next

59

term, to answer a bill in chancery exhibited against him in our said court by William King, a citizen and inhabitant of the State of Tennessee; and this he shall in no wise omit, under the penalty of $333⅓; and have then and there this writ. Witness Alexander Caldwell, Esquire, Judge of the United States for the said district, at Wythe court-house, this 13th day of August, one thousand eight hundred and twenty-seven, and in the 52d year of the independence of the United States of America.

J. Y. DODDRIDGE, *Clk. U. S. D. C.*

I acknowledge the service of the within. August 20th, 1827.

JAMES WHITE.

Executed. LEONARD STRAW, *D. M.*
For Br. Reeder, Marshal.

And at rules held in the clerk's office of said court on the first Monday in September, 1827, came the plaintiff, by his counsel, and filed his bill, which is in the words and figures following, to wit:

To the Honorable Judge of the circuit court of the United States for the western district of the State of Virginia:

Humbly complaining, sheweth unto your honor your orator, William King, a citizen of the State of Tennessee, and county of Davidson: that, on or about the 13th day of October, 1808, one William King, the uncle of your orator, departed this life in the State of Virginia, having first made and published his will, duly executed to pass real estate, dated the 3d March, 1806. At the decease of the said William King, he was seized and possessed of a large and valuable real and personal estate in the State of Virginia, and in other States, and, among other things, by his said will devised as follows: "In case of having no children, I then leave and bequeath all my real estate, at the death of my wife, to William King, son of my brother James King, on condition of his marrying a daughter of William Trigg, and my niece Rachael, his wife, lately Rachael Findlay, in trust for the eldest son or issue of said marriage." By said will he also bequeathed as follows, viz: "During the lifetime of my wife, it is my intention and request that William Trigg, James King, and her, do carry on my business, both saltworks and merchandise, each equal shares; and that, in consideration of the use of my capital, they pay out of the same the following legacies." Your orator represents that Mary King, the said wife of the said William King, never had a child by the said William King, and the said King died without issue; nor had the said William Trigg any daughter by his said wife Rachael, then or thereafter. The said William Trigg departed this life about the 4th August, 1813, whereby your orator became vested with the whole of the real estate of said William King, deceased, to be possessed after the death of his said wife Mary.

Your orator would further represent, that said William Trigg and James King proved said will in Washington county, State of Virginia, and took upon themselves the burthen of the execution thereof, and copy of which said will, hereto annexed, marked A, is prayed to be taken as a part of this bill of complaint; and the said Mary King, William Trigg, and James King, carried on the saltworks mentioned in said will, for their mutual benefit, until the death of said James King, who departed this life about the 10th November, 1809, in the county of Washington, State of Virginia, having

first duly executed and published *his* will, so as to pass real estate; and by said will he devised that said saltworks should be carried on, so far as his estate was concerned and interested, during the lifetime of said Mary King, widow of said William King, deceased, according to articles of agreement between him, said Mary King, and said William Trigg, theretofore entered into; and that the proceeds of said works belonging to him be *annually* divided, one-third part thereof to his wife Sarah, one-third to his executor therein named, Charles S. Carson, for his trouble in attending to said saltworks and *executing* said will, and the other third to be equally divided among his three children, your orator, Thomas King, and Rachael Mary Eliza King; and by said will he further devised, that, should the real estate of his brother William pass by the devise in his will to your orator, that then your orator was to have no part of his estate, either real or personal, and that the same should be equally divided between his said children, Thomas and Rachael Mary Eliza, as will more fully appear by reference to said will, hereunto annexed, marked B, and prayed to be taken as a part of this bill.

After the death of said James, said Charles S. Carson, together with Mary King and William Trigg, surviving executor, carried on said saltworks for those mutually interested, until the latter part of the year 1811, when one Francis Smith married the widow of said William King, deceased, who, with said other two, conducted the works as before her marriage they were conducted. The surviving executor, Wm. Trigg, died about the 11th August, 1813, after having executed *his* will, appointing Lilburn Lewis Henderson his executor, who thereby became, by representation, the executor of said William King, deceased, proved said will, and carried on said works under written contract, dated , between himself, as executor, John J. Trigg, guardian of William Trigg's children, and Charles S. Carson, executor of James King, deceased, on the one part, and Francis Smith, acting as trustee for appropriating two-thirds of the proceeds of said saltworks towards the payment of the debts due by the estate of said William King, deceased, of the other part.

Charles S. Carson, one of the parties to abovesaid agreement, died about 23d January, 1815, having duly made and published *his* will, appointing Thomas Claiborne, Francis Smith, and Andrew Russell, *his* executors, the two latter of whom qualified, and conducted the interest of said James King, deceased, in said works, together with said Smith's interest in right of his wife, and the interest of William Trigg's estate, then represented by said L. L. Henderson, executor as aforesaid, and guardian of William Trigg's children, until some time in the year 1819, when said Henderson failing to give additional security, as demanded by some of his securities, said Henderson was displaced about the 10th November, 1819, as will appear by an order of court, hereunto annexed, marked D, and prayed to be taken as part of this bill.

L. L. Henderson, executor as aforesaid, being thus displaced, and no one appearing to administer on said estate, the superior court of law, then in session for Washington county, committed the same to James White, then sheriff of said county, who thenceforward, being possessed of books, papers, and every thing appertaining to the rights and duties of an executor, proceeded to act under all the liabilities and responsibilities of an executor, according to the law in such cases made and provided; and your orator prays that the said James White, a resident of your district, be made a defendant to this bill.

60.

About this period, 1819, some of the *securities* of William Trigg and James King, former executors of William King, filed their bill in chancery; and their prayer being granted, two thirds of the proceeds of said saltworks were enjoined, by order of said court, for the payment of outstanding claims against William King's estate, and said James White, by order of said court, was appointed *receiver* of those *proceeds*. The proprietors of the saltworks, about this period, rented or leased said works for five years to John and William Sanders, at the annual sum of thirty thousand dollars; said five years' lease ending September, 1824.

Between the term of that court which appointed said White receiver and the next term of said court, said White refused to comply with a written covenant he had made with the said Sanders, to take from them one hundred thousand bushels of salt per annum at the works during their lease, for which $100,000 in specie was annually to be paid; by means of which refusal to comply with said agreement, as your orator has been informed and believes, said White became the *proprietor* of the Messrs. Sanders' lease, and, in addition to the other relations of executor and receiver in which he stood, he now assumed the character of debtor to himself, as receiver, in the sum of $20,000 per annum, payable semi-annually. Your orator is informed that, besides assuming to pay the lease money due by the Messrs. Sanders, said White agreed to pay them $73,300, and also agreed to pay one Gen. Francis Preston large sums of money to save him harmless from real or imaginary difficulties; but your orator had no part in bringing about those deep laid schemes of speculation; he was then too young, and could not have known that Col. White's miscalculations or embarrassments would lead him to the desperate resort of attempting to destroy or take from your orator by wiles and stratagems, a large and valuable estate.

By means of the several authorities acquired by said White, he had the sole management and unlimited control of said works; and he became well and intimately acquainted with their value and situation, knew all the advantages and facilities thereto belonging, better perhaps than any man then living; he received the profits thereof annually, and paid out the expenses, and knew well the neat gains, which were considerable.

Your orator was born in the State of Tennessee, in the month of August, 1803, (*three,*) as he is informed, and has, from his childhood, been constantly a resident of said State; it so happened that your orator never had a guardian. Some time in the month of March, 1823, having been raised under the expectation of a handsome fortune from the above described property, and having from that circumstance been in the habit of contracting debts carelessly, and being at that time pressed with many small debts, hearing that said White was disposed to purchase an interest in said property, your orator determined to visit said White, who was then at Huntsville, Alabama, and learn the situation of your orator's interest in said works, and the probability of obtaining money from him to relieve your orator's distress. When he arrived at Huntsville he was received by said White with the greatest apparent kindness, and with the most marked and particular attention: he was invited and taken by said White into his own room, and the said White, learning the situation and wants of your orator, expressed the deepest regret and warmest feelings of friendship, but represented the situation of the said estate as very desperate and much embarrassed, and positively affirmed there was nothing coming to your orator from said estate for many years, and perhaps nothing to be had therefrom for twenty

years to come: he also, in strong terms and glowing colors, represented the necessity and advantage of a young man of your orator's age and circumstances having an actual capital instead of an uncertainty. He at length proposed to buy out the interest of your orator, or a part thereof, in said works, and, as an inducement, in addition to the sum proposed to be advanced, he represented that there were numerous and strong connexions of your orator's who were about to combine to cheat him out of his interest, and, unless he had a friend and partner jointly interested to prosecute his claims, and the means of prosecuting a heavy and expensive law suit, and who was well acquainted with the situation of your orator's right, he might eventually *lose* the whole, or, if not, it would be of little or no benefit to him, and a source of vexation and distress. The said White stated he was *lucky* in managing suits, and would furnish all the money necessary for prosecuting said claims, which would amount, as he represented, to very considerable sums.

The same arguments, and the same delusive course of conduct, was made use of by the said White, on his arrival at Nashville, (where your orator then lived, and now resides,) soon after which, on the 17th day of April, 1823, he induced your orator to sign an agreement, transferring to him for the consideration of fifteen thousand dollars, all the interest of your orator to said works, as heir at law of said Wm. King, deceased, and as heir at law and devisee of his father, said James King, deceased, and the one half of your orator's interest as devisee of said Wm. King, deceased, *in the event it should be decided that your orator would hold said property as devisee under said will*, for which contingent interest, *as he represented it*, he agreed to give your orator thirty-five thousand dollars, in four equal annual instalments, the first thereof payable one year after said matter should be decided, and said estate reduced to possession, the $15,000 payable in three instalments, on 1st Sept. 1825, 1826, and 1827, as by reference to a copy of said agreement, hereto annexed, marked C, and prayed to be taken as a part of this bill, will more at large appear.

Your orator further states to your honor, that, at the time of the execution of said agreement, he was wholly ignorant of his right to said property, except he had understood and been informed he was in some way entitled to the same, or part thereof, but whether as devisee of the said Wm. King, or as devisee or heir of his father, or in what manner, he was unadvised, and acted wholly without legal advice or *proper information;* nor was he acquainted with the value of said property, which he charges to be worth from five to ten hundred thousand dollars, which was well known to said White. Your orator further represents, that, some time after the execution of said agreement, said White continued his kindness and assiduities to your orator: he appeared to feel great anxiety to prosecute your orator's claims, and earnestly and strongly solicited your orator to remain at Abingdon with him, no doubt with intent of retaining his influence over the mind of your orator, which was then very great.

In consequence of expecting to receive so large sums of money, your orator became still more embarrassed with debts; and when he had arrived at the age of 21 years, the said White, knowing his distressed situation, and having already made some advances to him, pressed him to confirm said agreement, representing the honor of a compliance with all engagements which a man of wealth and standing may make, and offering as a further inducement to pay your orator said $15,000 in hand, although not due for so

61.

time to come, as above stated. Your orator being as yet no better informed as to his rights than at the time of making said agreement, and being in the utmost distress for the want of money, and greatly under the influence of said White, *who was still in possession of said saltworks as aforesaid*, did execute some instrument of writing, intended to confirm said agreement, the exact tenor of which is unknown to your orator, the same being in possession of said White; and did receive from said White the said $15,000, part in cash, and part in property at extravagant prices; said White refused to pay your orator any more than some advances he had made, until your orator should confirm said agreement. It will also be observed, that interest was to be paid from and after Sept. 1, 1824, doubtless to cover the design of making prompt payment at that period, being a few days after your orator would have arrived at 21 years of age.

Your orator would further represent to your honor, that said White has, at all times since he was receiver, retained large annual balances in his hands, which should have been promptly applied to discharging the debts of said estate, that being the object of his receivership; yet said White, in order to cover such annual balances, has attempted and succeeded in buying up outstanding claims of doubtful and desperate character; and, contrary (as at present it appears to your orator) to his duty as executor and receiver, he endeavors to substantiate such desperate claims against the estate, hoping, no doubt, that the lapse of time will favor his unjust claims, which in some instances have been procured by him for trifling consideration, compared with the nominal amounts.

These matters being before the superior court of chancery, holden at Wythe, are merely introduced that your honor may have reference to the Commissioner's report on said business, or to any decree which may be rendered, tending to elucidate the allegations in this bill contained. Should said White not succeed in establishing such claims against the estate of which he is the curator, the proceeds which passed in his hands previous to Sept. 1824, will be more than sufficient to discharge all other outstanding claims against said estate, and thus would all interests in said works be freed from any liability or incumbrance after 1824, September.

The words in said agreement, (extract C,) "reserving, however, from the sale the rents, uses, and profits accruing from the same until the 1st day of September, 1824, which are not intended by this indenture to be sold or transferred;" your orator knows not how or why they were inserted: he has been informed, however, that in another case said White has represented that these words free a certain purchase of his from all incumbrance after Sept. 1st, 1824, and, if such were the fact, then would said White's claims, multiplying continually, draw back from your orator the small pittance received from said White. Your orator is, however, well advised that the sums or balance in said White's hands, Sept. 1824, were amply sufficient to pay all just demands, and that the successful resistance which said White has made against all attempts to dissolve said injunction by which he became receiver, up to the present time, August, 1827, has been with the view to increase the balance in his hands, with which to harass and speculate upon the estate, in which your orator was intended to be beneficially interested.

A strong example of this disposition in said White is afforded to your honor by the bill, answer, and accompanying documents, in the case of White *versus* Heiskill and wife, copies of all which will be appended to this bill, and marked as early as they can be furnished by the

clerk of the superior court of chancery at Wythe, all of which are prayed to be taken as part of this bill of complaint. The case White *versus* Heiskell and wife, taken in many points of view, is conceived materially to affect your orator in the matters set forth in this bill. The outlines of said case are briefly these: Elizabeth Mitchell, now Heiskell, was a legatee under the following words in Wm. King's will: "To my nieces Elizabeth Findlay and Elizabeth Mitchell, $10,000, in twelve months after marriage, provided they are then 18 years of age, if not, at the age of eighteen." The court of chancery at Wythe had decided that the above legacy was $10,000 to be divided between the two: an appeal was taken in the case. Heiskell, who had married Elizabeth Mitchell, proposed to L. L. Henderson, executor, to sell out this legacy, and also all interest that his wife might have in any event in Wm. King's estate; for which said Henderson paid said Heiskill $8,500 out of funds belonging to Wm. King's estate, which had been devised to James King and Wm. Trigg, the two deceased executors; but when Heiskill's wife became 21 years of age, and had duly executed a deed of conveyance to said Henderson, said Heiskill refused to deliver said deed, alleging that Henderson had defrauded him. Said Henderson afterwards gave a lien on his rights to said purchase, to one Wm. P. Thompson; after said Henderson's decease, said Thompson is said to have sold his right to said White, who forthwith represented that said Henderson had bought of said Heiskill, not with the funds of Wm. Trigg and James King, but with his own money; and that the said White, then standing in the place of said Henderson, was entitled either to the property bought of Heiskell and wife, or to have refunded to him the $8,500 paid Heiskell. Although said White well knew that said $8.500 was paid out of said estate's funds, or by those who were immensely indebted to the estate of which he then had the care: he knew that Master Commissioner Smyth had reported devastavit against said Henderson, to the amount of more than two hundred thousand dollars. And yet said White did institute suit in his own name, to cause said Heiskell to deliver over to him said deed of conveyance from said Heiskell and wife to Henderson, hoping thus either to acquire the right to said property, or fraudulently to enlarge the outstanding debts of the estate, and thus lessening the balance in his hands as receiver.

Of this said transaction said White informed your orator nothing at the time of making aforesaid agreement, nor has he said aught about it to your orator to the present time, said White being probably advised of late that the complex relations in which he stands to said estate, as well as the imperfection of any title derivable from said Henderson, might prevent his holding said Elizabeth Heiskill's interest in the real estate, (for much of Wm. King's, deceased, real estate is wholly undevised, if the title to the same did not, immediately on the death of said Wm King, vest solely in your orator by devise,) has, for some consideration, bargained with said Heiskill, and received a conveyance at a late date for said Heiskill's entire interest in right of his wife, and will now, no doubt, abandon his former claim, and rely upon this last purchase, and will thus endeavor to recover from *the estate*. Your orator thinks he, said White, ought to protect against the redemand of the said $8,500.

With the strongest reliance that equity and good conscience will not permit a plan artfully devised, and to some extent executed, to be longer carried on against your orator, he would further state, that the said White, previous to said agreement with your orator, was paying at the rate of

62.

$10,000 for each ⅓ of the works, per annum; but afterwards, said White represented to some of the owners of the saltworks that he had acquired the control of the whole of James King's, deceased, interest, when in truth he had not acquired such control, induced those owners, as they say, *to rent more than ⅓ lower* to said White than ever said works had before rented; and finding it an easy matter, with his immense capital, to pay such reduced rents, he has turned his attention to the acquisition and working of salt establishments on Goose creek, whence, at a low price at the works, not more than ½ of what is demanded at King's works, salt is carried to the Tennessee markets, to the almost entire exclusion of salt made at King's works; and thus may he reduce the profits of said King's saltworks, whilst he has control thereof, to any extent, to the great detriment of your orator's interest, and yet without injury to himself. Your orator further states, that said King's works partly consists of a well, which, at the time of digging, was walled inside with timbers called cribbing: of said cribbing but a small part now remains; and one effect of this loss of timber is a frequent falling in or excavating of the surrounding earth, endangering the filling up of the well, which might and probably would turn the water into some unknown channel. Your orator believes he is solely entitled to said real estate at the termination of the life estate before mentioned, and is informed that, although said White has been warned by bill in equity to guard against the abovesaid dangers, by obtaining skilful engineers to examine and repair the same, he yet persists in an apparent belief that there is no danger; for which your orator is at a loss to account, unless he ascribe it to a determination on said White's part to own the whole saltworks, which, your orator is informed, he has repeatedly said was his intention. All which actings and doings are contrary to equity and good conscience, and tend to the injury and oppression of you orator; and for as much as your orator is without relief, save in your honorable court, where matters of fraud and trust are peculiarly cognizable; to the end, therefore, your orator prays the writ of subpœna of your honorable court, to be directed to said James White, and that he be compelled, on his corporal oath, full, true, and perfect answer to make to all the matters and things in the foregoing bill contained, in as full and ample a manner as if each fact and charge were put by separate and distinct interrogatory. And your orator prays, that, by a decree of your honorable court, the said James White be compelled to deliver up said agreement, transferring the interest of your orator in said property to said White, and the deed or instrument of writing confirming the same, to be cancelled, and that, by a decree of your honorable court, the same may be vacated and annulled, or that the interest acquired by said White in said saltworks, with the lands adjoining thereto, be divested out of said White, and vested in your orator; and may it please your honor to grant to your orator such other and further relief as the equity and justice of his case may require, and, as in duty bound, he will pray, &c.

And at another day, to wit, at rules held in the clerk's office of said court on the first Monday in October, 1827, came the said James White, by his counsel, and filed his answer, which is in the words and figures following, to wit: To the honorable judge of the United States' court for the western district of Virginia: The answer of James White, a citizen of the commonwealth of Virginia, to the bill exhibited by William King, a citizen of the State of Tennessee. Saving all exceptions to the said bill, for answer thereto, or so much thereof as he is advised it is material for him to answer,

he answereth and saith, that he admits that, in November, 1819, Lilburn L. Henderson was, by order of the superior court of law holden for Washington county, displaced as executor of the last will and testament of William Trigg, and the management of the estate of the said William Trigg, and of the unadministered estate of William King, deceased, was committed to this defendant, then sheriff of Washington county: he also admits that some of the securities of William Trigg and James King, executors of William King, deceased, filed their bill in chancery, and their prayer being granted, two-thirds of the proceeds of William King's saltworks were enjoined by order of the court of chancery for the payment of outstanding claims against William King's estate; and that, by order of the same court, this defendant was appointed receiver of those proceeds; and this defendant, by a contract of purchase from William Sanders and John Sanders, tenants of Saltville, under a lease made by the proprietors, became possessed of the saltworks for a term which was to be complete and end on or about the first of September, 1824. This defendant saith, that, being so possessed, and engaged in carrying on the salt works, his business called him frequently to Huntsville, in Alabama, and elsewhere in the western country; that he was in Huntsville in the month of March, 1823, and there John H. Lewis, the maternal uncle of the plaintiff, informed this defendant that the plaintiff was desirous to sell his interest in the estate of William King, deceased, and that he, the said John H. Lewis, was desirous that this respondent should purchase. Soon after, the plaintiff, who resided at Nashville, arrived at Huntsville, and frequent conversations were held concerning the subject between the plaintiff, the said Lewis, and your respondent. It is not true that this defendant ever stated to the plaintiff that there might be nothing coming to him from the saltworks for 20 years to come; the agreement exhibited by the complainant refutes this allegation by showing that it was contemplated by the parties that the proceeds of Saltville, up to September, 1824, would extinguish the claims against the estate of William King. This defendant might say that it might be 20 years before this defendant could get possession of the saltworks under the devise to the complainant, as Mrs. Smith, formerly the widow of William King, might so long live; as to the allegation that this defendant represented that there were numerous and strong *connexions* of the complainant who were about to combine to *cheat* him out of his interest, this defendant does not admit that he used any such expression; but he may have said that the claim of the complainant would be strongly resisted by his connexions, some of the heirs of William King; and that his claim is so resisted is known to this court, and this defendant believes it will be known to the Supreme Court of the United States, to which it is understood the suit brought to try the validity of that claim is removed.

The defendant further states, that, after consideration and consultation, in which the said John H. Lewis, who was a lawyer, then residing at Huntsville, acted as the friend and adviser of his nephew, the complainant, the said Lewis, the complainant, and this defendant, proceeded together to Nashville, in Tennessee, the object of your respondent being to contract as well with Thomas Claiborne, who had married the mother of the complainant, for the share of his wife as a devisee of James King, as with the complainant, for his interest in the saltworks. This defendant had urgent motives for purchasing, besides the goodness of any bargain he might happen to make; his term in the saltworks was to end on or about the first of

September, 1824, when he expected to have two or three hundred thousand bushels of salt on hand, to remove which would be attended with inconvenience and loss; the sales, too, might be much affected, should not your respondent obtain the control of the works after the day last mentioned. On the arrival of the complainant and this defendant, with Lewis, at Nashville, after a negotiation of two or three days, your respondent contracted with the said Thomas Claiborne to purchase his right, and that of his wife, to one-ninth of the proceeds of Saltville, from September 1st, 1824, forward, for the sum of eighteen thousand dollars, and also contracted with the complainant to purchase his interest in Saltville, as well as heir of William King, as devisee of James King and William King, on terms shewn by the agreement between the plaintiff and this defendant, who, besides being at the expense of prosecuting the complainant's suit, was to give to the complainant 15 thousand dollars for his interest as heir of William King and devisee of James King, and 35 thousand dollars for his claim as devisee of William King, should the same be adjudged valid; and the plaintiff and this defendant having agreed, went to the office of James Trimble, a gentleman learned in the law, and a friend of the complainant, to get him to draw the contract between the complainant and this defendant, the said John H. Lewis and Thomas Claiborne being occasionally present; and the said Trimble drew the agreement, a duplicate was made, the complainant and this defendant executed it, and it was witnessed by the said Lewis, Claiborne, and Trimble, the complainant's step-father, uncle, and friend. The said John H. Lewis endorsed on the agreement that he had advised its execution by the complainant, and the said Thomas Claiborne endorsed that he had no hesitation in saying that he thought the complainant did well in making the said contract, which contract, bearing date on the 17th day of April, 1823, and the said endorsements, are herewith exhibited to this honorable court.

This respondent will freely admit that, in negotiating this contract, he said that the saltworks were not so valuable as they had been when they were leased to John and William Sanders; that salt had then sold at one dollar and fifty cents, and was, in April, 1823, selling at one dollar per bushel, which was true; and so far is it from being true, that the plaintiff when he sold was wholly ignorant of his rights to Saltville, that he told this defendant, at Huntsville, that Judge Haywood, one of the most profound lawyers of Tennessee, had given an opinion that he was entitled to the saltworks under the devise contained in William King's will, and promised to furnish this defendant with a copy of the said opinion; this defendant has since been furnished with a copy of Haywood's opinion, but cannot tell by whom; in it he finds the following clause: "Eighthly, If the estate of William King, the devisee, *determine by his death without having married*, as directed by the will, it will go to the heirs at law;' from this it would seem quite uncertain whether the devise to the complainant shall prove valuable, as Mrs. Smith may live as long, or nearly as long as him; and if the estate is to go to the heirs at law at his death, his devise may be of little or no value.

This defendant insists that if the complainant did not know the *precise* value of his rights, he was only in the same situation of every other man living; he was, indeed, it seems, only 19 years and 8 months old, but he was a well informed young man; his step-father, Thomas Claiborne, had been a proprietor of Saltville many years, was one of those who leased the

works to John and William Sanders in 1819, and knew well the situation of the works, and of William King's estate; the complainant had the advice of his uncle, John H. Lewis, the counsel of his friend Trimble, and he knew the opinion of Judge Haywood; and from the time of making the contract, in April, 1823, until the time of confirming it, in November, 1824, he generally resided at Abingdon or at Saltville. The obvious design of the complainant and his friends was to have his claim (which Chancellor Brown had decided void) powerfully prosecuted in the federal courts, considering that half the saltworks might then be saved for the complainant, whereas, if the claim was not effectually prosecuted, it would be lost; they considered the defendant as a proper person to prosecute the claim, and he agreed in opinion with them.

This defendant insists, that, considering the uncertainty in which the rights of the complainant were involved, he sold for a fair price. This defendant valued Saltville worth two hundred thousand dollars: the remainder, after Mrs. Smith's life, which seems a very good one, he would value at 100 thousand dollars. As an heir of William King the complainant might claim one-third of one-fourth of that sum, say $8,333, but if his claim of devisee is good, that claim is worthless; as devisee of James King, the complainant might claim one-third of two-thirds of a third, say $1,333 per annum, when the rent is 18,000 dollars, and this for the lifetime of Mrs. Smith, from 1st September, 1824. Now Claiborne sold his claim, one-third of a third, say $2,000 per annum, for 18 thousand dollars, and the plaintiff's claim to this share is involved in double doubt: he takes nothing as devisee of James King if he takes as devisee of William King; and James King devised of his interest in Saltville one-third to Charles S. Carson, executor, as a compensation to him for his trouble in attending to the interests of said works, and executing the will, and the other third to be divided among his three children; so that a question may arise whether Charles S. Carson's interest terminates with his death, and, if it does not, the right of the plaintiff as devisee of James King, were he to lose the devise in William King's will, would be one 27th part, say $666 66 cents per annum, during the life of Mrs. Smith; but this claim is gone by the decision of this court in the case of King's lessee *vs.* Findlay and Mitchell; should that decision of this honorable court be confirmed, then this defendant has given 50 thousand dollars for one-half of the remainder of the saltworks after the death of Mrs. Smith, a lady likely to live many years, besides the enormous expense of prosecuting the plaintiff's claim. Those works are now rented at 18 thousand dollars per annum, and they are not worth that sum to any tenant, unless he will rent Preston's works adjacent, and so obtain a monopoly. This defendant is decidedly of opinion that any one who will give $18,000 for King's works, and allow Preston's works to go into separate operation, will be seriously a loser in consequence of the competition.

As a further evidence of the decline of the saltworks in value, this defendant would observe, that Preston's rent was $30,000 per annum, and is now $11,000 per annum; he would insist that the present annual value of the saltworks is not such evidence of the value of them as it would be of an improved farm, for it is liable to be greatly affected by competition. This defendant offered to certain persons who had contracted with Francis Smith, and who were digging for salt on an adjacent tract, 20,000 bushels of salt to desist: that danger has become less threatening; the salt made at Goose creek works, mentioned in the bill, had sold at one dollar seventy-five

cents, was reduced to 75 cents in 1823, and is now selling at 50 cents, in consequence of the competition of the Kenawha works.

This defendant having shown the fairness of the original contract, will now show the circumstances attending its confirmation. The complainant, shortly before he arrived at full age, departed to Nashville, where he remained until some time in November, 1824, when he returned to Abingdon; he had, in the mean time, after attaining his majority, received $ 150 from your respondent's son on the contract, and had declared that a friend of his had advised him not to ratify the contract, but he would do it. After his return to Abingdon, in a conversation with this defendant, the complainant said that his circumstances were changed; that he was married, and had purchased a plantation, and wanted money; and said he must have the money due him sooner than the times appointed by the agreement. This defendant said to him, "I suppose, if I pay you all down, you will ratify the agreement:" the complainant replied in the affirmative. He also required a deduction of a thousand dollars to be made from the previous payments, some of which had been made in Tennessee money and property: with this demand, also, the defendant complied. This advance of money in November, 1824, which was not due until September, 1825, 1826, and 1827, was a serious inconvenience to this defendant, who is extensively engaged in trade, and had to raise the money by extraordinary means; but, to end suspense, and get the contract secured, this defendant paid to the complainant the whole sum coming to him, and, on his demand, entered into an additional contract, respecting the mode in which they should carry on the works. The complainant then was satisfied, executed a receipt and ratification, also the additional contract, which instruments are herewith presented. The witnesses, John D. Mitchell and Thomas Findlay, are cousins, and Thomas King is brother, of the plaintiff, who well knew that his contract was voidable, had been advised not to confirm it, yet did freely, deliberately, and for an additional valuable consideration, ratify and confirm the same. All the property which the complainant received of this defendant, except perhaps $ 100, was received previously, and an extravagant deduction demanded.

This defendant further saith, that, in further performance of the said agreement, he hath caused a suit to be brought in this honorable court, to try the validity of the devise to the complainant in William King's will, and at great expense he has prosecuted it so far with success. The complainant sold to your respondent one-half of a claim which the chancellor had said was worthless; your honor has decided that it is good; and it is probably this *improvement*, brought about at this defendant's expense, which has determined the complainant to try to get it back; but it is expected his attempt will be as ill received by a court of equity as it would be by a court of honor.

This defendant presumes that in this suit, the object of which seems to be to set aside the contract between the complainant and defendant upon false suggestions that this defendant obtained it by fraud, and that the complainant was entrapped into a confirmation of it, there can be no necessity to investigate the conduct of this defendant as receiver of the proceeds of Saltville under the order of the superior court of chancery, to which he is amenable, and to whom he has regularly reported his proceedings, to the satisfaction of that court. He is very willing that this court shall see those reports, and any order which that court has made or shall make, that this

court may see and consider that the defendant has, by his good management, *saved the saltworks from being sold or extended for Wm. King's debts;* that he has been charged interest on the annual balances found in his hands, and has been denied all compensation. This defendant has paid full value for all those debts of William King which he has discharged, except a debt due to Alexander Fulton, who made to this defendant a discount; but your orator, in settling as receiver, took for that debt Tennessee money at par, which would have been fairly subject to a discount of from 10 to 20 per cent. The claim of Heiskill and wife for legacies, and as an heir, sold by him to L. L. Henderson, who sold to Wm. P. Thompson at a high price, was purchased by this defendant from Thompson at a discount; and this defendant hath since compromised with Heiskill, and gave him upwards of three thousand dollars for a confirmation, and received the deed of Heiskill and his wife for the legacies, and her right or claim as heir. The allegation in the bill, that this defendant, at the time of making the agreement between them, said nothing of the purchase from Heiskill, is false, as your respondent did inform the complainant, when making the contract, that he had previously purchased from Heiskill. The allegation in the bill, that Henderson paid Heiskill $8,500 out of the funds of William King's estate, is one which he presumes cannot be sustained. Henderson was executor of William Trigg, had been a partner in trade with William Trigg before his death, was a partner in trade with Martin Beaty, and dealt extensively; and the funds of William King's estate had no permanent mark. This defendant believes that Henderson paid Heiskill lands, slaves, and merchandise, from the store of Henderson & Beaty, and he contends that Henderson's purchases and sales are valid, although he did handle funds of the estate of William King. The allegation in the bill, that since this defendant obtained the control of Saltville he has turned his attention to works on Goose creek, is without foundation: the defendant was concerned in saltworks on Goose creek long before he contracted with the complainant. The real cause of the reduction of the rent of Saltville, was the reduction of the price of salt. This defendant has rented from Francis Smith and Peter J. Branch two-thirds of Saltville, at the rate of $18,000 per annum for the whole, the utensils and broken metal at the works being thrown in, absolutely, which were of considerable value. The suggestion that this defendant will, while Saltville is under his control, and while he pays such rent, (and is responsible to McCall for his wife's share, in the same proportion,) voluntarily reduce the profits of King's saltworks, is most preposterous: it is with a view to make those works profitable, that he also pays $11,000 per annum rent for Preston's works adjacent, at Goose creek. Your respondent has only a share of one of several works. In fact this defendant's interest in the sales of Saltville salt is vastly greater than his interest in the sales of Goose creek salt. The allegation of permissive waste, in suffering the well to go out of repair, is ridiculous. This defendant is bound for the rent of two-thirds of the works during the life of Mrs. Smith, and is in the habit of taking care of his interest, and does not desire the advice of the complainant, who, when it suits his purpose, represents himself to be profoundly ignorant.

This defendant cheerfully admits his willingness to own the whole saltworks, if he can, on fair terms, considering it a property that will be much more profitable in a single hand than in several hands; for he is of opinion that either *third* of King's saltworks, (otherwise called Saltville,) or Pres-

ton's works, can produce more salt than can be profitably disposed of at Saltville, and that therefore a separation of interests would be ruinous to the proprietors. He also admits that he considers Thomas Claiborne's deed to him as guarantying the profits of Saltville subsequent to the first day of September, 1824: he also admits that he did himself expect that the proceeds of Saltville up to that date would discharge the debts of William King. Whether that expectation will be justified or not, does not yet fully appear.

This defendant prays to be hence dismissed with his costs.

SMYTH, *for defendant.*

WYTHE COUNTY, to wit.

This day James White personally appeared before me, a justice of the peace for the county aforesaid, and made oath that the foregoing answer, so far as relates to his own actings and doings, is true, and so far as relates to the actings and doings of others, he believes it to be true.

Given under my hand this 7th day of September, 1827.

JOHN L. LINDENBERGER, *J. P.*

To which answer, on the day last herein mentioned, the plaintiff replied generally; and thereupon general commissions were awarded the parties to take the testimony of witnesses.

And at November and December rules, 1827, this cause was continued for depositions.

And at January, February, March, April, May, June, July, August, September, October, November, and December rules, 1828, this cause was continued for depositions.

And at January, February, March, April, May, June, July, August, and September rules, 1829, this cause was continued for depositions.

And at a court continued and held for the said western district of Virginia, at Wythe court-house, on Thursday, the 24th day of September, 1829, on the motion of the plaintiff, by his counsel, leave is granted him to amend his bill.

And at October rules, 1829, this cause was continued for amended bill.

And at November rules, to wit, at rules held in the clerk's office of said court on the first Monday in November, 1829, came the plaintiff, and filed his amended bill, which is in the words and figures following, to wit:

To the honorable Alexander Caldwell, Judge of the United States' Court for the Western District of Virginia.

The amended bill of your orator, William King, a citizen of the State of Tennessee, in a suit in chancery pending in this court, wherein your orator is complainant, and James White, a citizen of Virginia, and a resident of this district, is defendant.

Your orator, by way of amendment to his said original bill, states: that, although all the allegations of the said bill are true, and he here, in this amended bill, reiterates the same, yet that many facts and suggestions are omitted in said bill, which tend very much to elucidate the defendant's conduct in all his transactions connected with the estate of William King the elder, and particularly his conduct in regard to his contract with your orator, now sought by him to be set aside. Some of these facts your orator will now state: most of them were either entirely unknown to him at the

time of filing his original bill, or, if they were known, their precise bearing and effect on his case was entirely unknown to him.

Your orator expressly charges that the whole conduct of the defendant, ever since the year 1819, when he first concerned himself with the estate of William King the elder, has been secretly regulated by one pervading motive—the intention to obtain in some way or other, and by any means he could devise, the exclusive possession and control of the saltworks, and to secure to himself the monopoly of salt. This single suggestion furnishes a clue to all his conduct. In addition to the fact set out in your orator's original bill, tending to shew the truth of this allegation, he further states, that the said James White was not only one of the securities of James King and William Trigg, as executors of William King the elder, and one of the parties complainant in the suit brought by said securities in the superior court of chancery holden at Wythe court-house, against the representatives of James King and William Trigg, for the purpose of applying the profits of the saltworks to the payment of the debts and legacies due from the estate of William King, the elder, as already stated by him in his original bill, but the said defendant was the party complainant, who assumed the entire conduct of the suit. When the prayer of the bill was granted in May, 1819, by the Chancellor of the Wythe district court of chancery, it became necessary to appoint a receiver of the rents and profits of the saltworks, for the purpose of collecting all the outstanding debts due to the saltworks, of collecting also the rents of the saltworks as fast as they accrued, and applying the fund to the payment of the outstanding debts and legacies. When the appointment was about to be made by the court, the said defendant earnestly solicited it, offering, if it was conferred upon him, that he would execute the duties of the trust *without charging any commission or any other compensation for his trouble:* on that condition he was appointed, as is shewn by the record of his appointment in said case. The duties of this trust were onerous and complicated; large outstanding debts were to be collected and applied, together with all the rents and profits of the saltworks, to the payment of said outstanding debts and legacies. An inspection of the defendant's accounts as receiver in that case will shew the magnitude of the duty to be performed; such a trust, so important, intricate, and responsible, could not have been, in the nature of human affairs, solicited, to be gratuitously performed, without some secret object offering an equivalent to the labors of the undertaker. In this case the only conceivable one is a consciousness of the control that would be thrown into the hands of the trustee over the trust fund, and the *power* that would follow it over those to whom that fund belonged. The manner in which the duties of this trust have been performed, furnishes strong proof of the truth of this conclusion. The receiver, instead of applying the trust funds as fast as they came into his hands to the payment of the outstanding debts and legacies due from the estate of William King the elder, for many of which judgments had long been rendered against said estate, as he was not only bound, but as he was expressly ordered by said chancery court to do, suffered interest to accumulate on these debts and legacies for years, whilst he appropriated large sums of the trust fund for a length of time to his own use, for the purposes of speculation, and even resisted a charge against him for interest on those funds, until the said court, on solemn argument, decided that he should pay it. In this manner the defendant, ever since his appointment, has been continually very largely in arrear to the trust fund

committed to his care. He was, when the contract was made with your orator in April, 1823, largely in arrear to the trust fund. Your orator charges, that, at the time when that contract was made, he was not only, as charged in his original bill, within his age of twenty-one years and very inexperienced in business, but he was altogether ignorant of the condition of the trust fund, and of the fact that the defendant was at that time largely in arrear to it, no information on this subject having been then imparted to him by the defendant. Your orator charges, that, if the defendant had performed his duty as trustee—if he had collected the debts due to William King's estate as soon as practicable, and applied the whole trust fund, as fast as it came into his hands, to the extinguishment of all the debts and legacies due from said estate, and made, from time to time, a full and fair exposition to all the parties interested in said fund, of its actual situation—that its actual condition in April, 1823, (when the contract between your orator and the defendant, now sought to be annulled, was made,) would have appeared so clearly prosperous, as by that time all or nearly all of said outstanding debts and legacies would have been paid; that no one, not even your orator, little conversant as he then was with business, and blind to his pecuniary interests, would have parted with his rights in such an invaluable property on such terms. Your orator further states, that, when the defendant was negotiating the terms of the said contract with him, he was also in treaty with Thomas Claiborne, who had intermarried with your orator's mother, for his said mother's interest in the saltworks under the will of your orator's father. The defendant, well knowing that the said Claiborne was the only one of your orator's friends who had any sort of knowledge regarding his affairs, and hearing, probably, that the said Claiborne had at one time advised him against selling out his interest in the saltworks, represented to the said Claiborne, that, as he wished a permanent interest in the saltworks, he could not buy out his and his wife's interest in the saltworks unless he previously contracted with your orator for his. In this way the defendant deprived your orator of the advice and assistance of his nearest friend in making the contract, since, as the said Claiborne had become interested in your orator's concluding the contract, he forbore to advise him in any way, lest it might be said that he advised him with an eye to his own interest. The legal operation of a clause of your orator's contract with the defendant, which he has never understood until long since the supposed confirmation of the contract by him, it having been only very lately explained to him by his counsel, is a further proof of the fraudulent views of the defendant, and how completely he availed himself of his advantages over your orator's inexperience. The contract provides that the defendant shall prosecute your orator's claim as sole devisee of the saltworks; and if, on the final determination of the cause, the said devise should be adjudged to have vested the estate in your orator, that then the defendant should pay your orator the further sum of $35,000, in four annual instalments, after the estate should be reduced into possession, for one-half of your orator's interest in said estate, with a further provision that either of the parties might, with the assent of the other, go on during the pendency of the suit to be brought in your orator's name for the recovery of said estate, and buy up the claims of the heirs at law of William King the elder to the saltworks, for the lowest price they could—the money to be paid by the defendant White, the purchase to be for the joint benefit of the parties, and the money so paid *to be deducted from the said sum of 35,000 dollars*. Under this provi-

time of filing his original bill, or, if they were known, their precise bearing and effect on his case was entirely unknown to him.

Your orator expressly charges that the whole conduct of the defendant, ever since the year 1819, when he first concerned himself with the estate of William King the elder, has been secretly regulated by one pervading motive—the intention to obtain in some way or other, and by any means he could devise, the exclusive possession and control of the saltworks, and to secure to himself the monopoly of salt. This single suggestion furnishes a clue to all his conduct. In addition to the fact set out in your orator's original bill, tending to shew the truth of this allegation, he further states, that the said James White was not only one of the securities of James King and William Trigg, as executors of William King the elder, and one of the parties complainant in the suit brought by said securities in the superior court of chancery holden at Wythe court-house, against the representatives of James King and William Trigg, for the purpose of applying the profits of the saltworks to the payment of the debts and legacies due from the estate of William King, the elder, as already stated by him in his original bill, but the said defendant was the party complainant, who assumed the entire conduct of the suit. When the prayer of the bill was granted in May, 1819, by the Chancellor of the Wythe district court of chancery, it became necessary to appoint a receiver of the rents and profits of the saltworks, for the purpose of collecting all the outstanding debts due to the saltworks, of collecting also the rents of the saltworks as fast as they accrued, and applying the fund to the payment of the outstanding debts and legacies. When the appointment was about to be made by the court, the said defendant earnestly solicited it, offering, if it was conferred upon him, that he would execute the duties of the trust *without charging any commission or any other compensation for his trouble:* on that condition he was appointed, as is shewn by the record of his appointment in said case. The duties of this trust were onerous and complicated; large outstanding debts were to be collected and applied, together with all the rents and profits of the saltworks, to the payment of said outstanding debts and legacies. An inspection of the defendant's accounts as receiver in that case will shew the magnitude of the duty to be performed; such a trust, so important, intricate, and responsible, could not have been, in the nature of human affairs, solicited, to be gratuitously performed, without some secret object offering an equivalent to the labors of the undertaker. In this case the only conceivable one is a consciousness of the control that would be thrown into the hands of the trustee over the trust fund, and the *power* that would follow it over those to whom that fund belonged. The manner in which the duties of this trust have been performed, furnishes strong proof of the truth of this conclusion. The receiver, instead of applying the trust funds as fast as they came into his hands to the payment of the outstanding debts and legacies due from the estate of William King the elder, for many of which judgments had long been rendered against said estate, as he was not only bound, but as he was expressly ordered by said chancery court to do, suffered interest to accumulate on these debts and legacies for years, whilst he appropriated large sums of the trust fund for a length of time to his own use, for the purposes of speculation, and even resisted a charge against him for interest on those funds, until the said court, on solemn argument, decided that he should pay it. In this manner the defendant, ever since his appointment, has been continually very largely in arrear to the trust fund

committed to his care. He was, when the contract was made with your orator in April, 1823, largely in arrear to the trust fund. Your orator charges, that, at the time when that contract was made, he was not only, as charged in his original bill, within his age of twenty-one years and very inexperienced in business, but he was altogether ignorant of the condition of the trust fund, and of the fact that the defendant was at that time largely in arrear to it, no information on this subject having been then imparted to him by the defendant. Your orator charges, that, if the defendant had performed his duty as trustee—if he had collected the debts due to William King's estate as soon as practicable, and applied the whole trust fund, as fast as it came into his hands, to the extinguishment of all the debts and legacies due from said estate, and made, from time to time, a full and fair exposition to all the parties interested in said fund, of its actual situation—that its actual condition in April, 1823, (when the contract between your orator and the defendant, now sought to be annulled, was made,) would have appeared so clearly prosperous, as by that time all or nearly all of said outstanding debts and legacies would have been paid; that no one, not even your orator, little conversant as he then was with business, and blind to his pecuniary interests, would have parted with his rights in such an invaluable property on such terms. Your orator further states, that, when the defendant was negotiating the terms of the said contract with him, he was also in treaty with Thomas Claiborne, who had intermarried with your orator's mother, for his said mother's interest in the saltworks under the will of your orator's father. The defendant, well knowing that the said Claiborne was the only one of your orator's friends who had any sort of knowledge regarding his affairs, and hearing, probably, that the said Claiborne had at one time advised him against selling out his interest in the saltworks, represented to the said Claiborne, that, as he wished a permanent interest in the saltworks, he could not buy out his and his wife's interest in the saltworks unless he previously contracted with your orator for his. In this way the defendant deprived your orator of the advice and assistance of his nearest friend in making the contract, since, as the said Claiborne had become interested in your orator's concluding the contract, he forbore to advise him in any way, lest it might be said that he advised him with an eye to his own interest. The legal operation of a clause of your orator's contract with the defendant, which he has never understood until long since the supposed confirmation of the contract by him, it having been only very lately explained to him by his counsel, is a further proof of the fraudulent views of the defendant, and how completely he availed himself of his advantages over your orator's inexperience. The contract provides that the defendant shall prosecute your orator's claim as sole devisee of the saltworks; and if, on the final determination of the cause, the said devise should be adjudged to have vested the estate in your orator, that then the defendant should pay your orator the further sum of $35,000, in four annual instalments, after the estate should be reduced into possession, for one-half of your orator's interest in said estate, with a further provision that either of the parties might, with the assent of the other, go on during the pendency of the suit to be brought in your orator's name for the recovery of said estate, and buy up the claims of the heirs at law of William King the elder to the saltworks, for the lowest price they could—the money to be paid by the defendant White, the purchase to be for the joint benefit of the parties, and the money so paid *to be deducted from the said sum of* 35,000 *dollars*. Under this provi-

sion, the view of the defendant evidently was to frighten the heirs of William King the elder to sell out their claims by the terror of the suit. If your orator gained his suit, any money laid out by the defendant, during its pendency, in the purchase of the claims of the heirs at law of William King the elder, would, by the terms of this provision, be deducted from the $35,000, and would be so much clear loss to your orator, whilst the defendant would not lose one cent. If your orator lost his suit, then, as none of the said sum of $35,000 would be due from the defendant to him, the said defendant would claim the purchase altogether for his own benefit; in either event, the heirs at law of William King the elder were to be terrified into selling their claims for a low sum. The defendant risked nothing, your orator every thing; for, by this provision, if the defendant succeeded in all his plans, he might go on during the pendency of the suit, and lay out the whole $35,000 in buying up the claims of the said heirs; if the suit was gained, your orator would lose the whole $35,000; if lost, the defendant would still have succeeded in acquiring the saltworks by purchase from the said heirs; fortunately, however, for all persons concerned in said estate, the defendant, although he attempted to execute that part of his scheme, has met with a complete failure. He did, indeed, whilst he continued to preserve his ascendency over your orator's mind, manage to make a contract with Thomas King, your orator's brother, and to which your orator was a party, by which the said Thomas sold his entire interest in the saltworks, as well as his certain interest therein during Mrs. Smith's life, as his yet uncertain interest as one of the heirs at law of William King the elder, for the paltry sum of $5,000: the said Thomas, at the time of making the said contract, was about eighteen years of age, and, feeling great pecuniary distress for the want of these funds which were in the defendant's hands as receiver, and, like your orator, understanding nothing of the condition of the said trust fund, or when he would be justly entitled to receive money from it, was thus induced, from his ignorance and necessities, to barter away his birthright for this miserable pittance. Your orator, now that he perceives the demerit of this transaction, takes blame for being in any way a party to it; he however hopes he may be considered as excusable from the influence which the defendant exercised over him, from his youth and inexperience, and from his utter ignorance of the actual or even probable condition of the trust fund in the defendant's hands at the time when the said contract with his brother Thomas was made; happily, however, your orator's said brother sustained no injury from having made the said contract, because, before he arrived at his full age, the actual condition of the said fund and the true character of the defendant was sufficiently developed to open all eyes, and he has brought suit in the said superior court of chancery against the defendant, claiming an entire avoidance of the said contract, and to be put into possession of his rights. In that suit Alexander McCall, who has intermarried with your orator's sister, Rachael Mary Eliza, is also, with his said wife, a party complainant, and your orator has filed his answer therein, disclaiming entirely on his part any benefit or share in said contract. Your orator hereby refers to the said contract filed by the defendant, with his answer in said case, and also to his own answer therein, which he prays may be considered as a part of this amended bill.

Your orator has gone into a detailed statement of these facts, because they will enable the court fairly to judge of the character and conduct of this trustee, and the manner in which he has been perverting and abusing

his powers, to the ruin of those whose interests have been committed to his care. Before your orator arrived at the full age of 21 years, he came to Abingdon, in the neighborhood of the saltworks, where he remained sometime before he signed the ratification of the contract in November, 1824. He is advised that the circumstances under which he signed the said ratification are such as to free him from all obligation to abide by it, and that a court of equity has full power to examine into the same, and to relieve him by annulling the said ratification. Between the original execution of the contract between your orator and the defendant, in April, 1823, and the time when the said ratification took place, the said White pursued, in the execution of his office of receiver and trustee, the same course which he had pursued from the date of his appointment. He was, as it is now ascertained, always largely in arrear to the said trust fund, either for moneys which he had retained unnecessarily in his hands, or, as it is believed, had applied altogether to his private purposes; instead of hastening collections of the debts due to King's estate, they were delayed by him most unreasonably and causelessly, so that in one instance a debt of near $10,000 has been entirely lost by his failing to collect it when he had the certain means of such collection in his power; it was a debt due from a certain Brice M. Garner, of whom the defendant purchased property to three or four times the amount of the debt, which he paid without retaining the debt, which he could and ought to have done. Large debts due by persons of unquestioned ability to pay them were suffered by him to remain uncollected, not only till November, 1824, but even down to the present time; the said receiver too, instead of going on to adjust and clear up his accounts at once, as he ought to have done, took such means only as were calculated to render them more complicated. Claims were brought forward by him before the said chancery court for his services, for discount on money, and of various other characters, so as to make the account of his receivership as embarrassed as possible, so that the same has not been settled down to the present time. It cannot even now be ascertained what the true state of that account ought to be, although the truth is so far ascertained as to enable your orator *now* to say, that, if the receiver had done his duty promptly and honestly, and explained the condition of the trust fund to the parties concerned, it would have been ascertained that at the time of said confirmation there were not only assets enough in the hands of the receiver to pay the outstanding debts and legacies, *but a large surplus for distribution* between your orator and the other proprietors of said fund. But this state of uncertainty and embarrassment was precisely the condition of things which suited the views of the defendant, since only in such a state of things could he hope for a confirmation of his contract with your orator. The said defendant further added to these difficulties by other measures calculated to press your orator into his views; by the said contract your orator was to be paid the sum of $15,000 for his certain interest in Saltville, in delayed instalments, commencing from the time of his attaining age and ratifying the contract; between, however, the time when the said contract was made, in April, 1823, and November, 1824, the said defendant encouraged the thoughtless extravagance of your orator by making advances to him on the said contract, partly in money and partly in property, at most extravagant prices, so that when the time arrived for making the confirmation, the said defendant had in this way greatly added to your orator's embarrassments. Under these circumstances of such peculiar embarrassment, ignorant of the condition of

his affairs, his property locked up from his enjoyment, and he kept designedly in the dark by his trustee concerning its true condition, he was required by the defendant to ratify the said contract, *or to pay him back his advances;* the defendant further offering that if he would ratify the contract *he would pay all the money down,* which he was only bound to pay in time with interest. Under these circumstances, it is surely not surprising that a thoughtless young man, as young as your orator then was, pressed by necessities which his trustee had aggravated, instead of relieving, when he saw no prospect of relief, and could not even guess when his property would be restored to him; when he saw all his means locked up in one of the defendant's hands, while the other was held temptingly forward with a present supply for his necessity, should adopt any means within his power for his relief. Your orator is advised that neither a court of law nor a court of honor would require a party to abide by a contract into which he had been entrapped by such deep laid schemes.

Although your orator was, for some time before the said confirmation of the contract, in the neighborhood of the saltworks, it was impossible for him to ascertain the value of the property as regulated by the profits. It has been already an important part of the plan of the defendant to keep those profits concealed; hence he never kept either an account at Saltville of his expenses in the manufacture of salt, or of the amount annually received by him for the sales of salt, so that nothing even approximating to truth can be ascertained by inquiry. The said defendant has himself filed an affidavit in the suit already mentioned, brought by Thomas King and McCall and wife vs. the said defendant, declared on oath that he can render no account of the profits of Saltville, that he has kept no books for that purpose, and knows not what it is; all that your orator can do is to shew the immense value of this property, and how very far the sum he has received from the defendant is beneath the real value. To shew the value of the said saltworks, your orator will state the large sums which the defendant has paid away in the last ten years, beginning in September, 1819, on account of his various contracts made to secure a monopoly of salt: he paid, or rather contracted to pay, to the widow and representatives of William King the elder, the amount of rent due from John and William Sanders, being $150,000 for five years' rent, ending on the 1st of September, 1824, besides $73,500 as a bonus to the Messrs. Sanders for their lease; a similar sum of $150,000 to the Messrs. Prestons for the rent of their works for five years, ending in May, 1825, (the defendant suffering the well of the Messrs. Prestons to lie idle, as far inferior in value to King's well, and realising all his profits from King's well;) besides a bonus of $10,000 to Joseph Bell to relinquish a contract to the Messrs. Prestons for the making of salt; the sum of $11,000 per annum to Gen. Francis Preston for the rent of his well since the expiration of his first lease; the sum of $6,500 per annum to Captain Smith for Mrs. Smith's interest in Saltville since September, 1824; the sum of $6,000 per annum paid to the representatives of William Trigg since September, 1824, besides the sums paid to the said Claiborne, of $18,000, of $15,000 paid to your orator, and the amount of profits due to Thomas King and McCall and wife since September, 1824, being one of the matters of controversy in the suit against the defendant; so that excluding the last mentioned profits, the defendant has paid or contracted to pay in the last ten years, on the account above mentioned, the sum of $479,000, and has, it is believed, after paying these immense sums in a period of un-

exampled mercantile distress, realised, as he has himself frequently boasted, large profits, which have been made altogether from King's well. These facts tend further to shew how much your orator was duped in the said contract than the opinions of the most intelligent witnesses. Your orator hereby refers to the record and proceedings of the suit now pending in the said superior court of chancery, holden at Wythe court-house, wherein the said James White and others are complainants, and your orator and other representatives of James King and William Trigg are defendants, as well as to the proceedings hereafter to be had in the said cause, a record of all of which will be duly exhibited in this suit. Your orator particularly refers to the receiver's account in said case, from which it will appear that the said receiver was very largely in arrear to the trust fund in November, 1824, and thus may be said literally to have bought *out and paid your orator with his own money.* Your orator also refers to the bill and answers and exhibits in the suit of McCall and wife and Thomas King vs. the said defendant, and the affidavit already referred to as filed by said defendant in said case. Your orator humbly concludes with the prayer of his original bill.

JOHNSON, *for complainant.*

And at December rules, 1829, and at January, February, March, April, and May rules, 1830, this cause was continued for answer to amended bill. And at rules held in the clerk's office of said court on the first Monday in June, 1830, came the defendant and filed his answer to the amended bill of the plaintiff; which answer is in the words and figures following, to wit:

To the Honorable Alexander Caldwell, Judge of the district court of the United States for the western district of Virginia.

The answer of James White to the amended bill exhibited in this honorable court by William King against this respondent. This respondent, reserving to himself all benefit of exception to the many insufficiencies, impertinences, and untruths contained in the said amended bill, for answer thereto, or so much thereof as he is advised is material, he answereth and saith, that it is true that this respondent (to his great regret) became one of the securities of William Trigg and James King in the bond given when they obtained probate of the will of William King. It is equally true that when these securities were threatened with utter ruin, this respondent became one of the parties complainant in an application to the superior court of chancery holden at Wythe court-house, for relief, by subjecting the interest which the representatives of the executors had in the saltworks to the payment of William King's debts, and that this respondent was appointed receiver, in pursuance of his wishes; but this respondent has yet to learn that in any of these things he did any act which is a proper subject of censure, until the plaintiff's discovery that they formed proper subjects of complaint to be exhibited in a court of justice in a bill, and repeated in an amended bill. This respondent believed that there was no more impropriety in becoming security, in endeavoring to save himself from the ruin which the conduct of his principals had brought upon him, or in acting as the agent of a court of justice; he was the more satisfied of this when he found that that court, who had competent jurisdiction on these subjects, accorded to him and his cosecurities what they desired. It is probable that this respondent took an active part in obtaining the relief which the securities obtained in May, 1819, and it is true that he desired to be ap-

pointed receiver; but this respondent explicitly denies that he acted under the influence of the motives ascribed to him by the plaintiff; the order of the said court is a conclusive refutation of the plaintiff's allegation on this subject. This respondent never was invested with the power of taking possession of the saltworks as receiver; his original duty was to receive the rents and other moneys in the hands of F. Smith, and pay the debts, which was afterwards extended to the collection of the outstanding claims due to the saltworks; this was the whole power ever conferred on this respondent. This respondent submits it to this honorable court to determine what connexion there is between such a power and the design ascribed to him, of acquiring the absolute property in the saltworks.

This respondent is not disposed to deny to the plaintiff the most accurate knowledge "of human affairs," but he denies the inference which he, in the exercise of that knowledge, draws of the motives which prompted this respondent to undertake the receiver's place without compensation. This respondent has always understood that it is not inconsistent with "human affairs" that a man should give all his efforts, at the expense of all *minor* considerations, to save himself from impending ruin; this was the "object," not "secret," but public, and perfectly understood by every one, which this respondent had in view. The personal assets of William King had been wasted to a very great amount by his executors; debts to a very large amount, about $150,000, as this respondent believes, due from the estate of William King, were unpaid; many of the securities had died, removed, become insolvent, or their property diminished; under these circumstances, this respondent apprehended that he should be the greatest sufferer. He believed that if the management of the business was confided to him, that he would be able to save himself and the other securities from injury; he has effected that object by his efforts. This respondent verily believes that if it had not been for the interference of the said court and the exertions of this respondent, there would be very little of the estate of William King (enormous as it is now represented by the plaintiff) remaining, and this controversy would probably never have been brought into existence.

The creditors of William King, after being delayed more than ten years with returns of no assets, had become impatient; they were taking measures to subject the real estate, which must have been sacrificed for a small portion of its value. This respondent verily believes that his exertions, instead of being proper subjects of reproach, tended to preserve the estate and raise its value.

This respondent always did believe that the only tribunal to which he was responsible in his character of receiver was the court from whom he received the appointment. He did not know until he saw the plaintiff's bill that this court had any power to examine his conduct and decide upon it; but it seems he was mistaken, at least if the plaintiff is to be tolerated in bringing his complaint before this court.

This respondent denies the statement in the plaintiff's bill, imputing to him misconduct in his character of receiver; he reported his transactions from time to time to the court under whose superintendence he acted; he never disguised the actual state of the fund. He denies that in April, 1823, or at any other time, he was largely in arrear to the fund committed to his care. It is utterly untrue that in April, 1823, there could, by possibility, have been any thing in this respondent's hands to which the plaintiff was entitled; the debts due from this estate of William King were not then

69.

paid, large sums have since been paid, and sanctioned by the court. This respondent denies that he failed in his duty in the collection of the debts put into his hands; he gave indulgences in some cases with a view more effectually to prevent any loss, in which he has succeeded in all cases, he believes. In relation to the debt due from Brice M. Garner to the saltworks, the statement in the plaintiff's bill is wholly false and groundless; it was a debt contracted before this respondent was appointed receiver, and the evidence of it was in the hands of Francis Smith, Esquire, and never was delivered to this respondent; several years since, the said Smith delivered it to McCall, who had intermarried with the plaintiff's sister, on account of his interest which he and the other representatives of William King had in the proceeds of the saltworks.

This respondent does not believe that the plaintiff was deceived as to the actual condition of the fund in this respondent's hands; there was at the time of the ratification of the agreement nothing concealed from him; the state of the fund was easily to be ascertained. This respondent then did believe, and now believes, that the products of the fund up to September, 1824, were requirable to pay the debts and legacies; under this impression, he has accounted with the parties entitled under the will of William King, for their several interests since that period. To McCall and wife and Thomas King he has paid what he deems a just compensation, though they contest the matter in a suit which they have brought. It is, therefore, without the semblance of truth that the plaintiff asserts that if he had known the true state of this respondent's accounts as receiver, he would not have made and confirmed the contract which he now seeks to set aside.

The statement of the plaintiff charging this respondent with making Thomas Claiborne negatively instrumental in the accomplishment of his purposes, is without any foundation. This respondent denies explicitly that he told Thomas Claiborne that he could not purchase his interest unless he could previously contract with the plaintiff for his. This respondent does not believe that he said any thing to Claiborne on the subject, further than expressing a desire to make a contract with the plaintiff: the fact was, that Claiborne applied to this respondent at Huntsville to make a contract for the sale of *his* interest; this respondent offered the said Claiborne eighteen thousand dollars; he asked twenty-five thousand; but before this respondent left Huntsville, he understood that Claiborne would take what this respondent had offered. This respondent believes that Claiborne had left Huntsville before the plaintiff arrived, but of this he is not certain; he did not accompany the plaintiff, the said Lewis, and this respondent, to Nashville, from which this respondent infers he was gone before the plaintiff arrived. This respondent denies, therefore, that he did any act intended to deprive the plaintiff of the said Claiborne's advice and assistance.

That part of the agreement that provides that the parties, with the assent of each other, might go on to purchase the claims of the heirs at law, is perverted by the plaintiff from its true meaning. What right would the plaintiff have to complain of any such purchase, *made with his own consent?* The agreement did not give the power alone to this respondent; as to the effect, there was nothing unreasonable in it. If the plaintiff assented to any purchase made, it was his own act; if he succeeded as sole devisee, the money which should be advanced by this respondent to purchase the right of the heirs would be lost; but if he failed, then this respondent's money would secure him one-half of the rights purchased; for this respond-

dent disclaims any such pretensions as are attributed to him; he deems himself incapable of making them; they are entirely preposterous and extravagant, fabricated by the plaintiff for the mere purpose of adding to the catalogue of unfounded imputations.

This respondent denies that he ever attempted to execute what the plaintiff calls "his scheme." The contract made with Thomas King was made by the plaintiff himself: if any turpitude attaches to the transaction, it belongs to him who takes advantage of a brother's influence over a brother to his prejudice. This respondent, at the request of the plaintiff, furnished the funds so far as payment was made. This respondent never insisted on that contract as being obligatory. The first opportunity this respondent had, he manifested his willingness to rescind it on being paid his advances with interest.

This respondent utterly denies the plaintiff's statement as to the circumstances of the plaintiff's ratification of the contract of April, 1823: the whole is a perversion of the real facts attending that transaction. This respondent, in his answer to the original bill, has stated what took place on that occasion; he does not think it necessary to repeat what he has said heretofore. This respondent denies that he ever concealed the profits of the saltworks—that he ever directly or indirectly took any measures to keep those interested from knowing every thing relating to that property: it is true that this respondent kept no accounts shewing the profits or loss. Until September, 1824, he, as receiver, was accountable for the sum of twenty thousand dollars annually, that being the rent which was sequestered by the court for the benefit of the creditors; he was also accountable for any debts due to the saltworks before the court of chancery interfered, which were put into his hands, and which he had collected. This respondent had purchased out the tenants, but he was accountable to no person for any of his profits; he was accountable *for the rent* which the tenants were to pay. From September, 1824, this respondent held the saltworks under Francis Smith, who held one-third of the life estate from Peter Branch, the husband of the relict of William Trigg, and guardian of his children, and who in those relations had control of another third; he also held the right of Thomas Claiborne, who, in the right of his wife, held one-ninth, and whatever right the plaintiff might hold; there was remaining the right of McCall and wife and Thomas King, which this respondent believed he had acquired by a contract with the said Claiborne, who was executor of James King, and who this respondent then believed, and still believes, had power to make the contract. Under these circumstances, this respondent did not think it necessary to incur the great trouble and expense of keeping accounts in detail of all his transactions, scattered over three States, so that this respondent has no accurate knowledge himself what are the profits or loss of the saltworks. This respondent knows that he has invested upwards of two hundred thousand dollars in the salt business, of his own private capital, since 1819; on the other hand, he has acquired considerable property in different parts, which was paid for in salt, at least in part. He has a large quantity of salt on hand, deposited in different places over an extent of country of several hundred miles, and there are many debts owing to him; but what the state of the account of profit and loss would be this respondent cannot even conjecture.

The extravagant account which the plaintiff gives of the value of the property is entirely delusive. It is valuable under certain circumstances; these are, that the saltworks should be carried on as if it was a unit, to pre-

vent the collision and interference with each other of the parties interested; that the saltworks of Francis Preston adjoining should be put out of competition, for an inconsiderable portion of the water at King's well will supply the whole demand; and that there should be no other formidable competition for a large extent of country. Under such circumstances the saltworks are valuable; but if the parties concerned should become competitors, or Preston put his works into operation, or any of those in search of saltwater in the neighborhood should succeed, that would destroy their value at once, and render them an object little to be coveted, as one-fourth of the salt which could be made would supply the whole demand. When this respondent acquired the possession under his purchase from the tenants, he, to avoid ruin, was compelled, in order to silence competition, to pay large sums of money to Preston; he was also compelled to pay $30,000 annually for the rent of King's works, as well as to pay the tenants $70,000 for their lease. All this was the result of an improvident contract which this respondent had previously made with the tenants, by which he bound himself to take 100,000 bushels of salt from them annually, at one dollar per bushel—salt then being one dollar and fifty cents. Preston put his works into operation, and undersold this respondent, which subjected him either to great loss, or compelled him to take the course he did.

This respondent cannot avoid expressing his surprise that this honorable court should be called on by the plaintiff to investigate the state of this respondent's accounts as receiver in the case before mentioned. This court will not presume to look into them; and without assuming such a jurisdiction, how is it to be ascertained that this respondent is largely in arrear, and that he has paid the plaintiff with his own money?—allegations which this respondent utterly denies.

This respondent denies that he ever was trustee for the plaintiff. He was appointed the receiver, which he understands is the agent of the court. He was to act in that character until the debts were paid; the moment that that was effected, the object was accomplished. It is true that no final adjustment of the subject has been effected, because, though the means under the control of this respondent will be sufficient, as he believes, for the payment of all the debts and legacies, yet some debts and legacies are still unpaid; the debts being litigated, and the legacies due to persons under age. This respondent has never opposed a settlement of his accounts in the chancery court.

This respondent protests against the license taken by the plaintiff under the permission to amend his bill. Instead of presenting new matter not before set forth, the amended bill is a tissue of repetitions, highly colored, of the allegations in the original bill, to which are added false accusations, wholly unconnected with the subject before this court.

The truth of the case, and the only reason on which the plaintiff's suit is founded, is the fact stated by this respondent in his original answer, that this respondent, at a very great expense, had succeeded in this honorable court to sustain the plaintiff's claim as sole devisee to the whole of William King's real estate. Had that case terminated otherwise, this respondent feels perfectly certain that he would never have heard any thing of this suit.

This respondent denies all fraud and injustice, and prays to be hence dismissed with his costs.

WYTHE COUNTY, set.

This day came James White before me, the subscriber, a justice of the peace for said county, and made oath that the facts stated in the within answer, so far as they are stated on his own knowledge are true, and so far as they are stated on the information of others he believes them to be true. Given under my hand this 4th June, 1830.

W. H. SPILLER, *J. P.*

And at July, August, and September rules, 1830, this cause was continued. And at a district court of the United States for the western district of Virginia, held at Wythe court-house on Wednesday, the 22d day of September, 1830, came the defendant, by his counsel, and set this cause down for hearing. And now at this day, to wit, on the day and year first herein mentioned, to wit, at a district court of the United States for the western district of Virginia, continued and held at Wythe court-house on Friday, the 24th day of September, in the year of Christ eighteen hundred and thirty,

This cause came on, this 24th day of September, 1830, to be heard upon the original bill and answer thereto, upon the amended bill and answer thereto, the exhibits filed, and depositions of witnesses, and was argued by counsel. On consideration whereof, it is adjudged, ordered, and decreed that the plaintiff's bill be dismissed, and that the defendant recover against the plaintiff his costs by him about his suit in this behalf expended; from which decree of the court the plaintiff prayed an appeal to the Supreme Court of the United States, which is granted him. Whereupon, he, together with Charles C. Johnston and Benjamin Estill, Esqs. his securities, entered into and acknowledged a bond in court in the sum of three hundred dollars, conditioned as law directs.

The following are copies of the exhibits referred to in the original bill:

[EXHIBIT A.—*William King's will.*]

Meditating on the uncertainty of human life, I, William King, have thought proper to make and ordain this to be my last will and testament, leaving and bequeathing my worldly estate in manner following, to wit:

To my beloved wife Mary, in addition to her legal dower of all my estate, the dwelling-house and other buildings on lot number ten in Abingdon, where I now reside, together with the garden, orchard, and that part of my Fruit Hill plantation south of the great road, and lands adjacent to Abingdon, now rented to C. Findlay & Co., and at my father's decease including those in his occupancy on the north side of the great road, for her natural life.

I also will and declare, that, in case my beloved wife Mary hath hereafter a child or children by me, that the said child or children is and are to be sole heirs of my whole estate, real and personal, excepting one-third part of specified legacies and appropriations herein after mentioned, which, in case of my having children, will reduce each legacy herein after mentioned to one-third part of the amount hereafter specified, and the disposition of the real estate, as hereafter mentioned, in that case wholly void.

In case of having no children, I then leave and bequeath all my real estate, at the death of my wife, to William King, son of my brother James King, on condition of his marrying a daughter of William Triggs, and my niece

Rachel, his wife, lately Rachel Findlay, in trust for the eldest son or issue of said marriage. And in case such marriage should not take place, I leave and bequeath said estate to any child, giving preference to age, of said William and Rachel Trigg, that will marry a child of my brother James King, or of sister Elizabeth, wife to John Mitchell, and to their issue; and during the lifetime of my wife it is my intention and request that William Trigg, James King, and her, do carry on my business in copartnership, both salt works and merchandising, each equal shares; and that, in consideration of the use of my capital, they pay out of the same the following legacies:

To John Mitchell, on condition of his assisting and carrying on business *there*, at the usual salary as formerly, viz: one thousand dollars per year, for from two to five years, as they may wish his assistance; an additional sum of ten thousand dollars, payable five years after my decease; and to each of his children upon coming of age, one thousand dollars more than the general legacy hereafter mentioned.

To Connally Findlay a like sum of ten thousand dollars, payable in five years. To my neices Elizabeth Findlay and Elizabeth Mitchell, (being called for my grandmother, with whom I was brought up,) ten thousand dollars in twelve months after marriage, provided they are then eighteen years of age, if not at the age eighteen; to each of my other nephews and neices at the age of eighteen, that is, children of my brother James, sisters Nancy and Elizabeth, one thousand dollars each; to each of the children of my half brother Samuel and half sister Hannah, three hundred each, as aforesaid; to my said sister Hannah, in two years after my decease, one thousand dollars; and to my said half brother Samuel, in case of personal application to the manager at Saltville, or to my executors in Abingdon, on the first day of January, annually, during his life, one hundred and fifty dollars; if not called for on said day, to be void for that year, and receipt to be personally given.

It is my wish and request that my wife, William Trigg, and James King, or any two of them that shall concur in carrying on the business, should either join all the young men that may reside with me and be assisting me on my decease, that are worthy, or furnish them with four or five thousand dollars worth of goods at reasonable advance, on a credit of from three to five years, taking bonds with interest from one year after supply.

In case my brother James should prefer continuing partnership with Charles S. Carson, in place of closing the business of King, Carson & King as soon as legal and convenient, then my will is that William Trigg and my wife carry on the business, one-third of each for their own account, and the remaining third to be equally divided between the children of my brother James, and sisters Nancy and Elizabeth.

To my father, Thomas King, I leave, during his life, the house he now resides in and occupies at Fruit Hill, together with that part of my land in said tract north of the great road that he chooses to farm, with what fruit he may want from the orchard; the spring house being intended for a wash house, with the appurtenances, subject to the direction of my beloved wife Mary, as also the orchard, except as aforesaid. I also leave and bequeath to my father the sum of two hundred dollars per annum during his life; and if accidentally fire should destroy his Fincastle house and buildings, a further sum of two hundred and twenty dollars per annum, while his income from there would cease.

I also leave and bequeath to the Abingdon Academy the sum of ten thousand dollars, payable to the trustees in the year one thousand eight hundred and sixteen, or lands to that amount to be vested in said academy, with the interest or rents thereon for ever. Abingdon, Virginia, third March, 1806.

WILLIAM KING.

Teste,

WM. D. NEILSON,
JNO. DOHERTY.

I hereby appoint William Trigg, of Abingdon, and James King, of Nashville, executors of my last will and testament, enclosed, written by my own hand, and signed the 3d day of March, 1806.

WILLIAM KING.

The other wills of previous dates to said 3d March, 1806, being void.

WILLIAM KING.

[EXHIBIT B.—*James King's will.*]

I, James King, of Washington county, and State of Virginia, being weak in body, but of perfect mind and memory, knowing the uncertainty of life, do make and declare this to be my last will and testament.

1st. I direct that all my just debts be punctually paid.

2d. Whereas my deceased brother William King, by his last will and testament, directed that during the lifetime of his wife, she, William Trigg, and myself, should carry on his business, both saltworks and merchandising, each equal shares; and the said Mary King having declined any share or concern in the mercantile business, William Trigg and myself entered into a partnership agreement, by which we are bound to carry on the mercantile business during the life of said Mary King, for our mutual benefit; and doubts having been suggested as to the disposal of said mercantile capital by the will of my said brother William King, deceased, we agreed and covenanted that if it should be decided that we took an absolute estate in the said capital, we would carry on the business as directed by the will; but if the use only of the capital was given to us during the life of Mary King, we would then carry on mercantile business on our own accounts, with our own capitals, for each other's mutual benefit. In pursuance of our agreement, and of my intention, I hereby direct that C. S. Carson, my executor, in conjunction with the said William Trigg, carry on the mercantile business as above directed; and that, as a compensation to my said executor for so doing, he receive one-half of the profits which would have fallen to my share, the other half to be divided as hereinafter directed.

3d. I will and bequeath unto my wife, Sarah King, my house and lot in the town of Nashville, and State of Tennessee, now occupied by Alexander Richardson, known and distinguished in the plan of said town of Nashville by the number sixty-seven, with its appurtenances; also, the following slaves, viz: one negro woman named Hannah, one boy named Samuel, and one named Joe, in the said town of Nashville, one negro girl named Mary, and one boy named Alexander, in my possession, for and during her natural life. Also, I will and bequeath to my said wife all my household and kitchen furniture, one horse named Tom, and my small carriage, with harness complete for two horses, to her and her heirs for ever.

72.

4th. I will and bequeath to my said wife Sarah two thousand dollars, being what I suppose would be her proportion of the profits of my mercantile business since the 13th day of October, 1808; also, one-third part of a debt due to me from the firm at Nashville, Tennessee, of Trigg, King & Richardson, for the business of King, Carson & King, to her and her heirs for ever, to be paid when the estate of William King, deceased, is fully adjusted by the executors, and his debts paid.

5th. It is my will and intention, and I hereby direct, that, as far as my estate is interested, the saltworks be carried on according to an agreement entered into between Mary King, William Trigg, and myself; that my part be under the direction of my executor during the life of Mary King; and that my portion of the proceeds of the said works be annually, during the life of Mary King, divided as follows: one-third to my wife Sarah, one-third to Charles S. Carson, my executor, as a compensation to him for his trouble in attending to the interests of said works and executing my will, and the other third to be equally divided among my three children, William, Thomas, and Rachel Mary Eliza.

6th. Should the real estate of my brother William not pass by the devise in his will, but descend to the heirs at law, then should my wife outlive Mary King, widow of said William, I hereby bequeath to her one-third of the profits of my portion of the saltworks during her natural life.

7th. Should the real estate of my brother William pass by the devise in his will to my son William, then it is my will and intention that my said son William receive or take no part of my estate; but that the same, both real and personal, be equally divided between my other two children, Thomas and Rachel Mary Eliza. But should he not take the said real estate by the said devise, then I will and bequeath all my real and personal estate which I now possess, or which may descend to me from my brother William, by devise on otherwise, (except what I have herein before disposed of,) to my said three children, William, Thomas, and Rachel Mary Eliza, and to their heirs for ever.

8th. It is my will and direction that my children be well educated, let it cost what sum it may, after the payment of my debts.

9th. And lastly, I do hereby constitute and appoint my trusty, faithful friend, Charles Stewart Carson, my sole executor of this my last will and testament, well knowing his attachment to myself and family, and that he will act towards them the part of a friend; and I do hereby direct that he be not required to give security in taking probate of this my last will and testament, for the faithful execution of the same, as I have the utmost confidence in him. I also direct that no public sale be made of any part of my estate; but that, when it may be necessary for the payment of debts, or otherwise, the same be sold by *my* executor, he having regard to specific legacies.

In witness whereof, I have hereunto subscribed my name, and affixed my seal, this twenty-first day of October, in the year of our Lord one thousand eight hundred and nine (1809.)

J. KING, [L. S.]

Signed, sealed, published, and declared by James King as his last will and testament, in the presence of us, who subscribed our names thereto as witnesses, in his presence and at his request.

D. CAMPBELL,
WILLIAM TRIGG.

[EXHIBIT C.—*King & White's agreement.*]

This indenture, made this 17th day of April, in the year of our Lord eighteen hundred and twenty-three, between William King, of Nashville, State of Tennessee, of the one-part, and James White, of Washington county, Virginia, of the other part, witnesseth, That said William King, for and in consideration of the covenants of the said James White herein after contained, and for and in consideration of the sum of one dollar, to him in hand paid before the sealing of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said James White, all that interest, right, and title which the said William King is entitled to as one of the legal heirs of William King, deceased, late of Abingdon, Virginia, and also as one of the devisees under the will of his father, James King, deceased, of, in, and to the saltworks in Washington county, Virginia, together with the lands adjoining and contiguous thereto, which are considered as connected with the use of the saltworks, and necessary thereto, being the same lands leased *with* the saltworks to John and William Sanders, and assigned to the said James White, and generally called by the appellation of Saltville, together with all the uses, rights, and privileges which he as one of the legal heirs of William, deceased, and as devisee of his father's will, will be entitled to; to hold to the said James White, his heirs and assigns, reserving, however, from the sale, the rents, and profits accruing from the same, until the first day of September, 1824, which are not by the indenture intended to be sold or transferred. And the said William King furthermore hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, release, convey, and confirm, unto the said James White, his heirs and assigns, one undivided or equal half part of all the right, title, and claim which said William King is entitled to, or will hold as devisee under the will of William King, deceased, formerly of Abingdon, in the State of Virginia, in the event that it should be hereafter decided or determined that he will take and hold the property devised to him in and by said will, of, in, and to the said property herein before described, that is, the saltworks in Washington county, State of Virginia, and all the lands adjoining and contiguous thereto, belonging to the estate of said William King, deceased, and which are at present in possession of said James White, as appertaining to Saltville; to hold to him, his heirs and assigns, for ever.

And the said James White, for himself, his heirs, executors, and administrators, doth covenant and agree, to and with the said William King, that, for and in consideration of the conveyance first above named, of the right and title which said William King has to said property, as one of the heirs at law of said William King, and as devisee under the will of said James King, he will pay to the said William King, his heirs, executors, or administrators, the sum of fifteen thousand dollars in legal currency of the United States, five thousand dollars of which shall be paid on the first day of September, one thousand eight hundred and twenty five, five thousand dollars on the first day of September, one thousand eight hundred and twenty-six, and five thousand dollars on the first day of September, one thousand eight hundred and twenty-seven; all of which shall bear interest from and after the first day of September, one thousand eight hundred and twenty-four. And the said James White further covenants and binds himself, his heirs,

73

executors, &c., that, for and in consideration of the sale secondly above recited, of whatever title and interest said William King as devisee of William King, deceased, under his will, has to said premises, that if it is determined or decided that said estate will pass by virtue of said devise to said William King, that he will pay in consideration of said conveyance, to the said William King, his heirs, executors, &c , the further sum of thirty-five thousand dollars, which shall be paid in four equal annual instalments, the first of which shall be payable twelve months after said matter shall be settled, and the estate can be reduced to possession under such decision; all of which shall be paid in legal currency of the United States. And it is also further covenanted and agreed between the said James White and William King, that said James White shall be at the expense, and it shall be his duty, to employ counsel learned in the law, the best which can be procured, to assist and prosecute the claim of said William King to said property devised to him in said will of William King, deceased, and shall cause the same to be prosecuted in the most effectual manner it can be done—all at his own proper costs and expense; and in the mean time he shall be permitted to purchase out the claim or title which any others have, or pretend to have, as heirs at law to said saltworks and lands, for the lowest price he can, which he may do with the advice and consent of said William King in writing; and said William King may also purchase any such claim of the heirs at law, provided said James White shall approve the same, and give his consent thereto in writing; and in case any such purchases are made by or for the use of either of them, it is to be for the joint and equal benefit of said James White and William King; and any sum of money to be paid for said purchases shall be paid by said White, with the approbation of said William King, and shall go in discharge of so much of the said sum of thirty-five thousand dollars above stipulated to be paid; and if a sum over and above said sum of thirty-five thousand dollars shall be deemed necessary by the consent of said parties to be applied, one-half thereof shall be paid by the said James White for himself, and the other half for the use of said William King, for which he shall be liable to account to said James White, if paid by him.

In testimony of which, the parties have hereto set their hands, and affixed their seals, this day and date first above written.

WILLIAM KING, [L. S.]
JAMES WHITE. [L. S.]

[EXHIBIT D.—*Order of court.*]

VIRGINIA.

At a superior court of law continued and held for Washington county the 10th day of November, 1819,

Due proof having been adduced to the court that the order made on the fourth day of the present term, requiring Lilburn L. Henderson, executor of William Trigg, deceased, who was surviving executor of William King, deceased, to relieve and indemnify William Mayo, William Palmer, and Thomas McChesney, securities of the said Lilburn L. Henderson as executor aforesaid, has been legally served upon him; and the said Lilburn L. Henderson having been solemnly called, and failing to appear, or to shew cause against this motion, it is considered by the court, on the motion of the before named securities, that all power and authority of the said Lilburn

L. Henderson over the estate of William Trigg, deceased, and over the estate of William King, deceased, be revoked and annulled, and the same are hereby revoked and annulled. And Francis Smith, who hath intermarried with Mary, late the widow of William King, deceased, appearing in court and renouncing all claim to the administration of the estate of the said William King, deceased, and no other relative nor creditor of the said William King, deceased, nor of the said William Trigg, deceased, appearing or setting up any right to the administration of his estate, the court doth order that the said Lilburn L. Henderson deliver up all the unadministered estate of his testator, William Trigg, deceased, and all the unadministered estate of William King, deceased, to James White, sheriff of Washington county, to whom the said estates are hereby committed, and who in the management thereof is required to govern himself according to law.

A copy. Teste, D. CAMPBELL, *D. C.*

The following are copies of the endorsements, the receipts, the confirmation of the agreement, (exhibit C,) and the additional agreement, referred to in defendant's original answer:

Lewis's endorsement.

Believing the within contract to be beneficial to William King, I have this day advised its execution by him, this 17th day of April, 1823.

JOHN H. LEWIS.

Claiborne's endorsement.

The within conveyance and contract having been made by William King, with the advice and consent of John H. Lewis, without any interference or opinion given by me, I have now no hesitation in saying that I think William King did well in making the same.

TH. CLAIBORNE.

Receipts.

Received of James White, August 4, 1823, on account of the within contract, $500 in Tennessee money.

WILLIAM KING.

Teste: HICKMAN LEWIS.

ABINGDON, *July 15th*, 1824.

Received of James White two thousand seven hundred and eighty-seven dollars and sixty-nine cents, on account of the within contract, as per account rendered.

WILLIAM KING.

Test: Y. C. WOODWARD.

$2,787 69.

Confirmation of agreement.

ABINGDON, *27th November*, 1824.

Then received from James White eleven thousand seven hundred and twelve dollars thirty-one cents, it being in full satisfaction of that part of the within contract, so far as the same relates to the said White's purchase of my interest in the saltworks as one of the distributees of my father's

74.

estate, for which he agreed to give me the sum of fifteen thousand dollars in the case I should not take the estate as devised to me by my uncle, William King; this sum, together with the sums previously paid, making the said sum of fifteen thousand dollars; hereby ratifying and confirming the within contract in all and every particular.

WILLIAM KING, [SEAL.]

Test, JOHN D. MITCHELL,
THOS. FINDLAY,
THOS. KING.

Additional contract.

We, the parties to the within and foregoing contract, agree mutually to add this further agreement to the within, that is to say, we agree and bind ourselves to each other, that we will, in the event William King, one of the parties, shall recover the saltworks under the devise of his uncle, William King, work the same jointly for the benefit of each other; but, in the event of a separation, which shall only take place by co sent of both parties, then, if either of the parties chooses to work his interest, he shall have the refusal of renting the other share, at such or any price that the other partner may be able to get for his interest or share. Witness our hands and seals, this 27th November, 1824.

WM. KING, [SEAL.]
JAMES WHITE, [SEAL.]

Witness, JOHN D. MITCHELL,
THOS. FINDLAY.

At a court held for Washington county the 21st day of November, 1824, this indenture of bargain and sale between William King of the one part, and James White of the other part, with covenants thereto annexed, and three receipts thereon endorsed, signed by said William King, and also an additional agreement thereto annexed, were severally acknowledged in court by the said King and White as their act and deed, and ordered to be recorded.

Teste, JACOB LYNCH, *D. C.*

The following is a copy of the affidavit referred to in the bill and answer:

White's affidavit.

The books at Saltville dont show the net profits of that place; they never were kept with that view; the entire business, as I have always believed, both before and since 1824, being my own individual concern. It never was intended that any person was to be either injured or benefitted by my contracts or supplies, but myself. By paying the different owners their rents, the balance, profit or loss, was my own; and my books has never shown a profit or loss account correctly, or been kept as partnership books, or, as abovesaid, shew the net proceeds; for instance, a large proportion, about three-fourths of salt made, is hauled away by my own agents or by my own orders; it is charged to them at from 6*s.* to 7*s.* 6*d.* per bushel at Saltville; they ship it to different points on the Tennessee river at my expense, and frequently my risk On the production of receipts at Saltville from the different persons on the river to whom this salt has been consigned, they are credited back with the amount delivered or lost, at the same price as it is charged to them. This closes these large accounts, when in

truth this salt may be all on hand, lost, &c., and when salt may not really bring more than from 90 cents to 12½ after covering charges, losses, &c.; nothing of these things or losses appear on the books at Saltville. I have furnished many of the wagons and teams, various horses, cattle, hogs, kettles, iron, negro men and women, clerk hire, rents, &c., &c., paid by me, none of which, or very little, has ever been charged to Saltville; so that I may safely say my books at Saltville, or any other books, would not show the net proceeds of Saltville since 1824 by hundreds of thousands of dollars.

JAMES WHITE.

Sworn to before me this 12th day of January, 1829.

P. J. BRANCH.

A copy. Teste, J. E. BROWN, *C. C.*

STATE OF TENNESSEE, *Davidson county.*

Be it remembered, that, in pursuance of the annexed commission, to us directed, from the United States' court for the district of Virginia west of the Alleghany mountains, we have caused to come before us, at the Nashville inn, in the town of Nashville, county of Davidson, and State of Tennessee, on the 2d day of August, 1828, between the hours of 9 o'clock A. M. and 6 o'clock P. M., Thomas Claiborne, a witness for plaintiff in a certain matter of controversy now depending in said court, wherein William King is plaintiff and James White defendant. Said witness being first duly sworn, deposeth:

Thomas Claiborne's first deposition.

Question by plaintiff. Are you acquainted with the parties to this suit?

Answer. I am acquainted with William King and Col. James White.

Question. Please state what part you acted, if any, in bringing about the contract between William King and Col. James White in April, 1823, respecting certain interests of said King in the saltworks called Saltville, in the State of Virginia?

Answer. I had no part or agency, directly or indirectly, in bringing about the contract between William King and Col. James White in 1823, respecting certain interests of the said King in the saltworks called Saltville, in the State of Virginia. So far from taking any part in bringing about said transaction between the parties, I had earnestly advised said King against making any sale or contract about his interest in said saltworks, upon the ground that he was too young and inexperienced to know any thing of the value of his interest, and also upon the ground it would be calculated to furnish the means of extravagance and folly, to the indulgence of which dispositions, as his stepfather, feeling greatly anxious for his welfare, I was greatly opposed: for these reasons, and on account of my wishing to sell my own interests, acquired in right of my wife, the mother of said King, to said White, which he, White, said he was unwilling to purchase unless he could get a more permanent interest than mine, as a matter of feeling as well as of judgment, I utterly refused to have any agency in the transaction between the said parties, or even to be present when they were in treaty about it; nor did I know any thing of the contract from the parties until a contract was made between them, and at the office of James Trimble, Esquire, I was by the parties informed of the terms of said contract.

Question. What was the situation of William King in 1823, in a pecuniary point of view? Had he not before that been extravagant and heed-

less, contracting debts? and was he not then involved in debt beyond his means of discharging them?

Answer. I know not what his precise condition was in the year 1823 in a pecuniary point of view, but I understood that he was indebted considerably, as well from himself as from some of his creditors, who had applied to me for payment of their demands; he then certainly had no means for the discharge of those demands, except from me, who had opposed his extravagance by every means in my power. In conversation with him upon the subject of the sale, these demands were used by him as arguments to induce him to sell his interest in the saltworks; to which I replied, that, if he would cease his extravagance, that I myself would pay his debts then existing against him, rather than he should dispose of his interest, however inconvenient it might be to me to raise the money; he, however, had been taught by his companions to believe that his wealth was inexhaustible, and my counsel was so entirely lost or disregarded.

[This answer objected to on behalf of defendant, so far as it regards hearsay or reputation of King's indebtedness.]

Question. Did you at any time endorse on the back of said contract that you had no hesitation in saying that William King had done well in making said contract? and what was your reasons for so believing at that time?

Answer. I did, after the execution of said contract between the parties, make an endorsement, (at the request of Col. White,) on the back of said contract, that I thought William King had done well to make said contract; the opinion then entertained by me and so expressed, was the result of remarks and statements made by the parties, and principally by Col. White, in relation to the embarrassments and difficulties of said King, prosecuting his claim under the devise of his uncle, William King, against all his connexions and friends, and the youth, inexperience, and inactivity of said King, whose habits, manners, and qualifications, totally disqualified him from the successful assertion of his claim; all which difficulties and objections I did sincerely believe operated upon his claim.

Question. Was James Trimble, Esq., called on as a confidential adviser, or was he merely called on by said White and King to draw up the articles between them?

Answer. I did not know nor did I ever hear that Trimble was called on by either party in any other character than as a mere lawyer to draw up the contract; he drew the deed made by myself and wife to Col. White, which was executed by me at the same time, and it was only in the character of a lawyer-scrivener that I called on him.

Question. From your knowledge of William King's, deceased, estate, do you or do you not believe that John H. Lewis's acquaintance with said estate was such as to enable him of his own knowledge to advise the complainant in this case of his best interests?

Answer. I am not informed of Mr. Lewis's means of information in relation to the estate in question, but presume that he had very little acquaintance with it, except that derived through the contracting parties.

Question. Do you or do you not believe that after Col. James White's appointment as receiver in 1819, of the proceeds of part of the saltworks, that he used the trust fund thus acquired to the injury and oppression of some of the owners of said works? and state any circumstances you know on this subject, affecting the rights of William King.

[This question withdrawn.]

Question. What was your understanding from the parties in relation to the amount of money paid William King by Colonel James White over the sum of $15,000? Was it an additional consideration, or an equivalent for depreciated paper? Was King paid in Tennessee bank paper, and what was the discount of that paper in 1824 at the time of the payment?

Answer. I have not a perfect recollection whether I was present when Col. White paid King a sum of money in 1824: I then received from King, at Abingdon, a considerable sum of money, being for a farm I had sold him near Nashville, Tennessee; but whether I was present when he received the money of White, I do not now distinctly recollect. I do not know that Col. White paid him more money than the $15,000, except that I heard from King, and, if I mistake not, from White also, that some sum of money, perhaps $1,000, had been then allowed to King on account of previous payments in Tennessee money. I cannot distinctly say at what discount Tennessee money then was, but I think about 15 per cent.; that is the sum I allowed King on his payment made at that time to me, though this allowance of mine was made some months after to King. I did understand from both the parties that White, in order to get the contract confirmed by King, had agreed to anticipate the time of the payment of the balance then due to King: this, I think, took place in November or December, 1824.

[This answer objected to on behalf of Col. White, so far as it regards impression of witness, or any conversation between King and witness, when White was not present.]

Question. Was it your understanding from the parties that any additional consideration was demanded by King or paid by White, other than the above spoken of allowance for depreciated paper, and the prompt payment of the whole in 1824, instead of the annual payment?

Answer. I have no recollection that any sum in addition to the $15,000 was either required on the one hand or given on the other, except, as is before stated, as an equivalent for Tennessee money paid to said King by White.

Question. Was not William King a minor at the date of said contract? and was not White in possession of the property bargained for when King arrived at full age? and when did he come of age?

Answer. William King was a minor at the date of the contract. White was in possession of the property bargained for when King arrived at full age, under a lease made by the proprietors of the saltworks to John and William Sanders, which expired on the 1st September, 1824. King arrived at full age, agreeable to his father's register, on or about the month of August, 1824, the particular day is not now recollected.

Question. Do you know or believe that said White's influence over said King was considerable at that time, and that his extravagant course of conduct and expenditures were flattered and encouraged by said White? and state whether yourself or John H. Lewis were guardians of said King at the time of making said contract or afterwards.

Answer. I know that Col. White's influence over King was very considerable at the time of the ratification of the contract; as to my belief in relation to White's encouragement and flattery of his extravagance, it is merely a matter of inference. Neither myself nor John H. Lewis were at any time whatever the guardian or guardians of William King, or of his brother Thomas, or sister Elizabeth.

[Inference and belief objected to on behalf of Col. White.]

76.

Question. Were you occasionally present at the time the contract was made which James Trimble wrote? and did you advise William King to confirm the contract when he arrived at full age?

Answer. I repeat that I was at no time present with King and White when they made their contract, occasionally or otherwise, written by James Trimble. I have stated that I had before advised King most earnestly not to sell or dispose of his interest. I repeat that I used every argument in my power, even to abuse almost: I shamed him for permitting his extravagance to urge him to dispose of a most valuable property, that had been given to him on account of his name, which was that of his uncle, the testator, and his friend. All this without effect. Again, in the fall of 1824, he asked me if he should ratify the contract; to which I gave no other reply than that I could not nor would not have any thing to do with it.

Question. Did Col. James White inform William King, during his visit at Nashville, in 1823, that he had rights in William Heiskell and wife's interest in William King's estate adverse to said William King's? and when did he inform you first that he had acquired such rights from said Heiskell and wife, or from others?

Answer. I know nothing of whether Col. White informed King, during his visit at Nashville, in 1823, or at any other time, that he had rights in William Heiskell's and wife's interest in William King's estate adverse to William King's. I have no knowlege that he ever gave him such information or not. I think Col. White informed me that he claimed Heiskell's and wife's interest in virtue of an assignment from William Thompson, who had got it from L. L. Henderson as a collateral security or mortgage, in consequence of Thompson's liability for Henderson. I am not certain when he gave me this information, but think it was in the fall, 1824, but I am far from being certain as to the precise time.

[This question and answer objected to so far as they contain illegal or incompetent evidence.]

Question by defendant's agent, John Humes:

Question. Did not you, by appointment, go to Huntsville in the fall of 1822 to sell out yours and your wife's interest in King's saltworks? did you then trade? and if not, state why?

Answer. I did go to Huntsville in the year 1822 for the purpose mentioned. I did not sell; the reasons I cannot tell entirely. I know White refused to give what I asked, which I think was the sum of $25,000. I do not at this time know of any other reason for not trading than that White refused to give me what I asked.

Question. Did not William King go to Huntsville, immediately after your return from that place, to sell out his interest in said saltworks to White? and did not King go to Huntsville upon your informing him White would purchase of him?

Answer. I went to Huntsville in the spring of 1823 again to sell my interest in the saltworks to Col. White: when I met Col. White we had a great deal of conversation in relation to his purchase of my interest; afterwards we came to something like an agreement as to the price, which was the sum of $18,000, on condition that I should retain my interest in the lease that he then held under the Sanders's, which would expire on the 1st of September, 1824; this I considered as nearly as much as I had asked him at the same place the fall before. Col. White then stated that he would not like to buy my interest, which was only a life estate, unless he could

get a more permanent interest, and observed that he understood William King wished to sell out his interest; to which I replied, that he had so stated, but that I would not advise him to do so. Seeing that I could not make my trade with White, I was setting out on my return home, and the Colonel asked me to tell King when I came home to go and see him, which I promised to do, and accordingly did on my arrival at home. King went to Huntsville accordingly, and there I understood they made their bargain or the outlines of it; they then came together to Nashville, where the Colonel and myself not only concluded our trade, but him and King concluded their agreement also.

Question. Is not John H. Lewis your wife's brother and the uncle of William King? and was he not in Huntsville when King went there to trade with White? and did he not come to Nashville with them, and was present at and witnessed the contract between them?

Answer. John H. Lewis is my wife's brother, and is uncle to William King; he was in Huntsville, as I understood, when King went there to trade with White; he also came to Nashville, as I believe, with them. I know he was here; I believe he was present at, and I know he endorsed upon the agreement, to which I think he was a subscribing witness, that he approved of the contract, but I cannot repeat the words of his endorsement.

Question. Did you not hear William King say, previous to the completion of the contract, that Col. White had told him he did not wish to trade with him without the consent and approbation of his friends and relations?

Answer. I have no recollection of his making such a statement in my presence: if it ever occurred, it has escaped my recollection.

Question. What was the reason of your endorsing on the agreement your consent to and approbation of it?

Answer. This question has been already answered in a former part of this deposition.

Question. Was it not, at the time of the contract with Col. White, your opinion that there would be great doubt and difficulty in William King's asserting and substantiating his claim? and was not this opinion founded on other knowledge and information than that obtained of Col. White?

Answer. I did entertain such an opinion in relation to his claim under the devise of his uncle, which was founded on other information than that obtained from Col. White; White professed to have a different opinion from me.

Question. Did not William King go on to Abingdon, Virginia, in June or July, 1823, and remain there for twelve or fifteen months, and frequently visit the saltworks? and state, if you know, whether he was not informed of their annual productiveness.

Answer. William King went to Abingdon sometime in the year 1823, but at what time I cannot say; how long he remained there I do not recollect. I think he returned to Nashville once just before he was married, and again in the spring or summer of 1824 with his wife How often he visited the saltworks I do not know, or whether he knew their annual productiveness or not I do not know; but for myself I must say, although I was interested in them from February, 1812, to September, 1824, I could never find out how productive they were, except so far as the lease spoken of before.

Question. Did you not go on to Abingdon, Virginia, in the fall of 1824, with William King and family? and had you not sold a plantation near

Nashville to William King? and was he not to make you some cash payments? and did you not expect to receive them through White while in Virginia?

Answer. Yes.

Question. At the time when Col. White paid William King the balance of the $15,000 upon his confirmation of the contract, was the whole of said balance due? if not, at what different periods after that were the payments to be made?

Answer. I think it was not due; reference to their contract will best explain and answer that question.

Question. Did not White pay King the balance on the contract, as you understood from King, in consequence of King's stating to him that his circumstances were then altered; that he had a family to provide for, and wanted money; and that he had purchased a farm from yourself near Nashville, and had to raise money to meet his payments to you?

Answer. I did not so understand from King or White.

Question. Had not King, in his contract with you for the purchase of your farm, engaged to pay you $5,500 by the 1st of January, 1825? and had he not pledged himself to pay you that amount?

Answer. Yes.

Question. Do you or do you not know how much money White paid King in Tennessee paper? and, if so, at what discount?

Answer. I do not know how much money in Tennessee paper, had been paid to King by White; I allowed King 15 per cent. as discount on Tennessee money, by the reference to the brokers in Nashville for that date.

Question. Was it not one inducement with John H. Lewis and other friends of William King, in advising or consenting to his making the contract with White, that the latter could prosecute his claim under the will of his uncle with a better prospect of ultimate success?

Answer. I know not what were John H. Lewis's inducements in advising or consenting to his making the contract with White; no other relation of King's had any thing to do with it, as far as I know or believe. I myself believed that White could prosecute his claim with a better prospect of success than King could himself do.

Question by complainant. You state, in answer to an interrogatory put by defendant's agent, that Col. White expressed an opinion favorable to King's recovery of his interest under the devise of his uncle; do you mean by that statement to convey the idea that Col. White represented that King could assert the claim with success without the assistance of Col. White? Did he not state that it would be very difficult to effect a recovery—that he would have to oppose all the friends of King, and have to expend large sums of money, and wade through many difficulties? and did he not state that no other person could assert said claim so well as himself? State all his representations in relation to said matter.

Answer. Col. White and myself have had many conversations in relation to the nature and probable success of William King's claim under the devise of William King, his uncle. White certainly stated at Trimble's office many difficulties which would arise in the progress of the suit, such as that he, King, would have to encounter great opposition from all his own immediate relations, who were claiming the property as heirs at law of William King, deceased; that all the lawyers of Virginia of any eminence almost had already been employed against him: that it would cost a great deal of

money in expenses; that the delay would be very great; that King was too young and inexperienced for such a weighty matter, but that he was experienced, had capital, no connexions to violate, and was always very successful at law. And further this deponent saith not.

TH. CLAIBORNE.

We, Elihu H. Call and Wilkins Tannehill, two of the acting justices of the peace in and for the county of Davidson, and State of Tennessee, do hereby certify that the foregoing deposition was sworn and subscribed to before us at the time and place mentioned in the caption, the complainant, William King, and John Humes, agent of defendant, present, and is in the handwriting of deponent. We further certify, that we are not related to either of the parties, nor in any manner interested in the event of the suit. Given under our hands and seals this 2d day of August, 1828.

E. H. CALL, [SEAL.]
W. TANNEHILL, [SEAL.]

Fees 2 dollars.

This deposition is excepted to because the 3d, 10th, 15th and 27th questions put to the witness are leading questions.

ALEXANDER SMYTH,
Of counsel for the defendant.

August 15th, 1828.

Claiborne's second deposition.

STATE OF TENNESSEE, *Davidson county.*

Be it remembered, that, in pursuance of the annexed commission, to us directed, from the United States' court for the district of Virginia west of the Alleghany mountain, we have caused to come before us at the Nashville inn, in the town of Nashville, county of Davidson, and State of Tennessee, on the 21st day of August, 1830, between the hours of 9 o'clock A. M. and 6 o'clock P. M., Thomas Claiborne, a witness for plaintiff in a certain matter of controversy now depending in said court, wherein William King is plaintiff and James White is defendant. Said witness being first duly sworn, deposeth and saith:

Question by plaintiff. Are you acquainted with the parties to this suit?

Answer. I am acquainted with William King and Col. James White.

Question by same. Will you state what part you acted, if any, in bringing about the contract between William King and Col. James White, in April, 1823, respecting certain interests of said King in the saltworks called Saltville, in the State of Virginia?

Answer. I had no part or agency, directly or indirectly, in bringing about the contract between William King and Col. James White in 1823, respecting said interest in said saltworks. So far from taking any part in bringing about said transaction between the parties, I had earnestly advised said King against making any sale or contract about his interests in said saltworks, upon the ground that he was too young and inexperienced to know any thing of the value of his interest, and also upon the ground that it would be calculated to furnish him the means of extravagance and folly, to the indulgence of which dispositions (being his stepfather, and feeling greatly anxious for his welfare) I was greatly opposed; moreover, I desired to sell my own interests, acquired in right of my wife, who is the mother

78.

of William King, to said White; and as White stated that he was unwilling to purchase unless he could get a more permanent interest than mine, as a matter of delicacy and feeling as well as judgment, I utterly refused to have any agency in the transaction between the said parties, or even to be present when they were in treaty about it; nor did I know any thing of the contract from the parties or either of them until it was actually made, and I was then informed by the parties of the terms of the contract at the office of James Trimble, Esq

Question by same. What was the situation of William King in 1823 in a pecuniary point of view. Had he not before that been extravagant and heedless in contracting debts? and was he not then involved in debt beyond his means of discharging them?

Answer. I know not what his precise situation was in the year 1823 in a pecuniary point of view, but I understood that he was considerably indebted, as well from himself as from his creditors, some of whom had applied to me for payment of their demands, which he had himself no means to pay; these debts were said by him to be his principal inducement to the sale of his interest in the saltworks. Before the sale I had proposed to him to pay all his debts for him if he would cease his extravagance, and not sell his claim to the saltworks; but this offer, as well as my counsel, was lost upon him?

Question by same. Did you at any time endorse on the back of said contract that you had no hesitation in saying that William King had done well in making said contract? and what was your reasons for so believing at that time?

Answer. I did, at the request of Col. White, after the execution of the contract between them, endorse on the back of it that I thought King had done well to make said contract; the opinion so at that time entertained and endorsed by me was the result of remarks made to me and facts stated, principally by Col. White, in relation to the embarrassments and difficulties of said King prosecuting his claim under the devise of his uncle against all his connexions and friends, and the youth, inexperience and inactivity of said King, whose habits, manners, and qualifications, disqualified him from the successful assertion of his claim: all which difficulties and objections I did sincerely believe operated upon his claim; but had I then known White as well as I now do, that endorsement would, I now think, never have been made by me.

Question by same. Was James Trimble, Esq., called on as a confidential adviser, or was he merely called on by said White and King to draw up the articles between them?

Answer. I did not know nor did I ever hear that Trimble was called on by either party in any other character than as a mere lawyer to draw up the contract; he drew up the deed made by myself and wife to Col. White, which was executed by me at the same time, and it was only in the character of a scrivener that I called on him.

Question by same. From your knowledge of the condition of William King's, deceased, estate, do you or do you not believe that John H. Lewis's acquaintance with said estate was such as to enable him of his own knowledge to advise the complainant in this case of his best interest?

Answer. I am not informed of Mr. Lewis's means of information in relation to the estate in question, but presume that he had very little acquaintance with it, except that derived principally from White; I myself, who

have been interested in that estate since February, 1812, have never been enabled to collect sufficient information of its condition to be able to give such advice to complainant.

Question by same. What was your understanding from the parties in relation to the amount of money paid King by White over the sum of 15,000 dollars? Was it an additional consideration, or an equivalent for depreciated paper? Was King paid in Tennessee bank paper and what was the discount of that paper in 1824 at the time of the payment?

Answer. I do not myself actually know that White paid King more than $15,000; but I heard from King, and I think from White also, that some sum of money, perhaps one thousand dollars, had been allowed to King on account of previous payments in Tennessee money. I cannot say distinctly and certainly at what discount Tennessee money then was, but I think about 15 per cent.: that is the sum I allowed King on his payment made at that time to me for a farm I had sold him in the neighborhood of Nashville. I understood from both the parties that White, in order to get the contract confirmed by King, had agreed to anticipate the time of the payment of the balance then due to King; this took place, I think, in the month of November, 1824. I know of no additional sum to the $15,000 above specified either being demanded or received, or given in any other way than as above mentioned.

Question by same. Was not William King a minor at the date of said contract? and was not White in possession of the property bargained for when King arrived at full age? and when did he come of age?

Answer. William King was a minor at the date of said contract. White was in possession of the property bargained for as a receiver and assignee of a lessor, when King arrived at full age, in the month of August, 1824: the lease under which White held expired on the 1st September, 1824.

Question by same. Do you know or believe that said White's influence over said King was considerable at that time, and that his extravagant course of conduct and expenditures were flattered and encouraged by said White? and state whether yourself or John H. Lewis were guardians of said King at the time of making said contract or afterwards.

Answer. I know that White's influence over King at the time of the ratification of the contract was considerable. From some purchases made by King from White, I am confident that it was the design and policy of White to encourage King's extravagance and folly; nevertheless, as this is opinion, I may be mistaken. Neither myself or John H. Lewis are now, or at any time whatever have been, guardians of either William King, or his brother or sister.

Question by same. Were you occasionally present at the time the contract was made which James Trimble wrote? and did you advise King to confirm the contract when he arrived at full age?

Answer. I repeat that I was at no time present with King and White when they were making their contract, either occasionally or otherwise. I have before stated that I had most earnestly advised King not to dispose of his interests in any way. I repeat that I used every argument in my power, even to abuse almost, and such as should grow out of gratitude to the testator—shame for such extravagance as would urge him to dispose of such a bequest by his near relation, on account of his name, with every other argument that I could suggest. When, in the fall of 1824, he asked me whether he should confirm the contract, I again repeated to him that he had received my counsel or opinion before, and I could have nothing to do with it

19.

Question by same. Did White inform King, during his visit at Nashville in 1823, that he had rights in William Heiskell and wife's interest in William King's estate adverse to William King? and when did he inform you first that he had acquired such rights from said Heiskell and wife or from others?

Answer. I knew nothing whether White informed William King, during his visit at Nashville, in 1823, or at any other time, that he had rights in Heiskell and wife's interest in William King's estate adverse to William King: I have no knowledge that he ever gave him such information or not. White informed me that he claimed Heiskell and wife's interest in virtue of an assignment from William Thompson, who had got it from L. L. Henderson as a collateral security or mortgage, in consequence of Thompson's liability for Henderson; I think I learned this from White in the fall of 1824, but of this I am not positive. And further this deponent saith not.

TH. CLAIBORNE.

We, Joseph Vauh and James Barrett, two of the acting justices of the peace in and for the county of Davidson, and State of Tennessee, do hereby certify that the within and foregoing deposition were sworn and subscribed to before us at the time and place mentioned in the caption, neither plaintiff or defendant being present, and is in the handwriting of deponent. We further certify, that we are not related to either of the parties, nor in any manner interested in the event of the suit. Given under our hands and seals this 21st day of August, 1830.

JAS. BARRETT, [SEAL.]
JOSEPH VAUH, [SEAL.]

John H. Lewis's first deposition.

In pursuance of the enclosed commission to us, Richard B. Purdon and Robert D. Middleton, acting justices of the peace for the county of Madison, and State of Alabama, directed by the clerk of the district court of the United States for the district of Virginia west of the Alleghany mountain, we have caused to come before us, at the court-house in the town of Huntsville, Alabama, John H. Lewis, aged thirty-four years, who, first being duly sworn on the Holy Evangelists the truth to speak with regard to a certain matter of controversy pending in said court, wherein William King is complainant and James White is defendant, deposeth and saith:

Question by complainant. Do you know any thing of a contract between William King, of Nashville, Tennessee, and Col. James White, of Abingdon, Virginia, in relation to the sale of said King's interest in the saltworks commonly called Saltville, in Virginia? if so, state what you know.

Answer. About the month of April, 1823, William King visited Huntsville, Alabama, for the purpose, as I understood, of selling to Col. James White, of Abingdon, Virginia, an interest in the saltworks devised to him by his uncle, and after remaining a few days they went to Nashville together, in company with deponent, for the purpose of closing the contract, and also for the purchase, on Col. White's part, of the interest which Thomas Claiborne had, in right of his wife, in said saltworks. After their arrival in Nashville I was so much engaged in other matters that I know little or nothing of the details of the negotiations until the contract for King's interest was written and presented to me to make an endorsement thereon of my approbation of the contract, giving as my opinion that it was beneficial to said King, who at that time was a minor. To this endorsement I objected,

as I know nothing personally. It seemed, however, that the purchase of King's interest was a sine qua non to the purchase of Claiborne, and after being further urged by Thomas Claiborne, who stated his necessities were imperious, and after going more into detail of William King's situation, I did, as well as I recollect, both endorse and attest the execution of the contract. The information I received with regard to the whole matter was from Col. White and Thomas Claiborne, but principally from the former; and without such communications I had no other information about the matter. After this, and in the month of July, 1824, I visited Abingdon on business, where I heard from a gentleman whom I knew was well informed about the matters relating to said King's interest, and other facts not detailed before, either by Col. White or Thomas Claiborne, which induced me entirely to change my opinion with regard to the contract; such as that Col. White stood really in relation of debtor to the Kings, and had not fully represented the value of the saltworks. Under the full belief of these facts I advised William King, the complainant, of the circumstances, and asserted that he should not ratify the contract on his coming of age, offering at the same time money enough (say five thousand dollars, which I had with me) to refund back to Col. White any money he might have advanced said King on said contract, as well as compensation for services rendered in the prosecution of a suit contemplated in their contract. This King positively refused to do, stating that he was not deceived, and was satisfied, and that he would think himself a rascal not to ratify it. Under these circumstances I have never mentioned the matter to him since. It was designed that Col. White should have a beneficial contract, in as much as the fees of counsel he was bound to employ would be high, the suit troublesome, and the result doubtful.

Question by complainant. Was James Trimble, (now deseased,) who wrote the articles, or deed, between White and King, called on as a confidential adviser of King, or was he merely called on to draw up the writings between the parties?

Answer. I do not know. I do not recollect to have been in their company until the contract was written.

Question by same. Did said White, at the time of making said contract, inform you or said King that he had procured an interest adverse to said King's by purchase of a certain claim derived through L. L. Henderson, from William Heiskell and wife, which latter was a legatee under William King's, deceased, will?

Answer. I do not distinctly recollect, but I think Col. White did mention that he either had or could have the interest of one of the claimants of King's estate, which was adverse to William King. If I recollect rightly, the purchase of adverse interests was contemplated under the contract of White and King.

Question by same. In July, 1824, when you were at Abingdon, and had advised William King not to confirm the contract with White, did you or not inform White that you had acted under false information when you made the endorsement on said contract?

Answer. I did not while at Abingdon. I told Col. White last winter that I had advised William King, while at Abingdon, not to ratify it; but whether I gave my reasons for the advice, I do not recollect. I thought it was then useless, as I understood that he had ratified it at full age, under a knowledge of all the facts I knew.

80.

Question. Did Col. James White, according to your present recollection, act with great apparent caution and circumspection, or did he communicate fully, freely, and candidly, about all William King's interest? and (the mind, character, and conditions of the parties considered,) was William King able, knowing, and otherwise placed on such grounds as gave him a fair and equal chance in making the contract with said White?

Answer. The communications made by Col. White to me was apparently designed to complete the contract with said King; it was full and free thus far, but if the whole facts had have been communicated to me I would surely not advised the contract. With regard to King's ability then to bargain advantageously with Col. White, considering their respective ages, business habits, or knowledge of King's real interest, it would be like putting a Lilliput in contact with a giant. The great reason why the contract was advised by me was, that the array of talent, energy, and numbers against King was great; and that, having no men of sufficient energy connected with him to undertake the prosecution of the suit, being himself destitute of business habits, it was deemed advisable to sell an interest to Col. White, who seemed a fit man for the office.

Question by same. Do you or do you not know, that, about the time of making said contract, and some time afterwards, that said King was greatly under the influence of said White? and state if you know any thing of said King's indebtedness at Col. White's store in Abingdon, at the time of your visit in 1824.

Answer. He seemed very *friendly* and confiding in Col. White at the making of the contract, and July, 1824. I understood in July, (1824,) that he was indebted to White some five thousand dollars for advanced money, &c., on the contract.

Question. Had King or not lived extravagantly in his expenditures after making said contract? and did he not seem buoyed up in his idle expenses by a confident hope of holding the devise made to him by his uncle William King?

Answer. I think he remained after the contract much as he was before; not having made any money, he had not learned to take care of it. From frequent observations for the five previous years of said King, I believe he thought that he never could spend all his money.

Question by John N. Humes, the agent of James White. Will you state your relationship to the complainant, William King?

Answer. I am his maternal uncle.

By the same. Was not Thomas Claiborne in Huntsville on the subject of aforementioned contract previous to William King's coming to Huntsville on the same business? Did not said Claiborne have frequent conversations with Col. White on the subject of his purchase of interests in said salt works, previous to King's arrival? and did not Claiborne return to Nashville previously?

Answer. I do not recollect.

By the same. Did not Col. White object to engage in the contract with King, he being a minor, unless it were approved by his friends? and did not you accompany King and White to Nashville, when they went on from Huntsville to Nashville on this business? Was not your approbation particularly required?

Answer. Col. White did make those objections, and required, most positively, such assent. I went to Nashville on other business, and did not know

that my assent would be required until I reached there, and the contract was drawn up; without my and Mr. Claiborne's assent he would not have made it.

By the same. Were you acquainted with the circumstances that induced you to advise King to rescind the contract at the time of his entering into it? Do you know that Col. White knew of the existence of these circumstances at that time? and from whom did you subsequently obtain a knowledge of these facts?

Answer to the first part of the interrogatory. I was not acquainted with them at the time the contract was made, and did not know them until I reached Abingdon in July, 1824. Col. White must necessarily have known them. The information being confidential, I do not see fit to give the name of the author.

Question by complainant. In stating that you think Col. White would not have entered into said contract with William King, a minor, do you mean that Col. White's judgment was good enough to know that the approbation of some of King's relations would be highly advantageous to him in case of future controversy, and did not White insist on your endorsement? and state whether you were at any period the guardian of William King.

Answer. I did not know Col. White's motives in insisting on my endorsement. The requisition made by him speaks for itself. I never was William King's guardian.

Question by same. Would William King listen to the advice of any one so soon as White's, in 1824, judging from his acts and conversations within your observation?

Answer. I had no influence over W. King at that or any other period in 1824; he seemed very confiding in Col. White.

Question by same. Do you know that Col. James White was in possession of the property bargained for, both at the time when the contract was made, and when said King is said to have confirmed said contract? and who informed you that King had done any act of confirmation first?

Answer. I know nothing of my own knowledge about his possession; I always understood that at both periods he was in possession of the salt-works. I do not know from whom I got the information with regard to the ratification of the contract; probably Col. White, last winter.

Interrogatory by White's agent. Did Col. White know that Mr. Claiborne was under any pecuniary pressure at the time the contract was made?

Answer. I do not know.

Question by complainant. During your intercourse with White and King in 1823, April, did you not learn that Col. White had made a proposition to buy King and Claiborne's interest by letter in February, 1822?

Answer. I do not know any thing about it.

Further this deponent saith not.

JOHN H. LEWIS.

It is hereby agreed that the foregoing deposition may be read as testimony in the above suit, saving and reserving to the defendant and plaintiff all objections to illegal or irrelevant testimony; the time of taking said deposition being waived by both parties.

WM. KING.
JAS. WHITE,
By his agent, Jno. N. Humes.

81.

We do hereby certify that the above deposition was sworn and subscribed to before us, this 8th day of August, 1828. Witness our hands and seals.

ROBT. D. MIDDLETON, *J. P.* [L. S.]
RICH'D B. PURDON, *J. P.* [L. S.]

In pursuance of the enclosed commission to us, Philip H. Foote and William Barker, acting justices of the peace for the county of Madison, and State of Alabama, directed by the clerk of the district court of the United States for the district of Virginia west of the Alleghany mountains, we have caused to come before us, at the office of John H. Lewis, Esq., in the town of Huntsville, and county of Madison, as aforesaid, John H. Lewis, aged thirty-six years, (and on the 14th day of August, between the hours of 9 o'clock A. M. and 6 o'clock P. M. according to notice acknowledged by the defendant,) who first being duly sworn on the Holy Evangelists the truth to speak with regard to a certain matter of controversy pending in said court, wherein William King is complainant and James White is defendant, deposeth and saith as follows, in answer to interrogatories:

John H. Lewis's second deposition.

Question by complainant's attorney. Do you know any thing of a contract between William King, of Nashville, Tennessee, and Col. James White, of Abingdon, Virginia, in relation to the sale of said King's interest in the saltworks, commonly called Saltville, in Virginia? If so, state what you know.

Answer. About the month of April, 1823, William King, the complainant, visited Huntsville, Alabama, the place of my residence, for the purpose, as I understood, of selling to Col. White, of Abingdon, Virginia, an interest in the saltworks devised to him by his uncle; and after remaining a few days, they went to Nashville, in company with deponent, for the purpose of closing the contract, and also for the purchase, on Col. White's part, of the interest which Thomas Claiborne had in right of his wife in said saltworks. After their arrival in Nashville I was so much engaged in other matters that I knew little or nothing of the details of the negotiations, until the contract of King's interest was written and presented to me, to make an endorsement thereon of my approbation of the contract, giving it as my opinion that it was beneficial to said King, who at that time was a minor. To this endorsement I objected, as I knew nothing personally. It seemed, however, that the purchase of King's interest was a *sine qua non* to the purchase of Claiborne's; and after being farther urged by Thomas Claiborne, who stated that his necessities were imperious, and after going more into detail of William King's situation, I did, as well as I recollect, both endorse and attest the execution of the contract. The information I received with regard to the whole matter was from Col. White and Thomas Claiborne, but principally from the former; and without such communication I had no other information about the matter. After this, in the month of July, 1824, I visited Abingdon on business, where I heard from a gentleman who I knew was well informed about the matters relating to said King's interest, and the facts not detailed either by Col. White or Thomas Claiborne, additional information, which induced me entirely to change my opinion with regard to the contract; such as that Col. White stood really in relation of debtor to the Kings, and had not fully represented the value of the saltworks. Under the full belief of these facts, I advised William King, the

complainant, of the circumstances, and advised him not to ratify the contract on his coming of age, offering him at the same time money enough (say five thousand dollars, which I had with me) to refund to Col. White any money he might have advanced said King on said contract, as well as compensation for services rendered in the prosecution of a suit contemplated in their contract. King positively refused to do this, stating that he was not deceived, and was satisfied, and that he would think himself a rascal not to ratify it. Under these circumstances, I have never mentioned the matter to him since. It was designed that Col. White should have a beneficial contract, in as much as the fees of counsel he was bound to employ would be high, the suit troublesome, and the result doubtful.

Question by same. Was James Trimble (now deceased) who wrote the articles, or deed, between White and King, called on as a confidential adviser of King, or was he merely called on to draw up the writings between the parties?

Answer. I do not know. I do not recollect to have been in their company until the contract was written.

Question by same. Did said White, at the time of making said contract, inform you or said King that he had procured an interest adverse to said King's, by purchase of a certain claim derived through L. L. Henderson from William Heiskell and wife, which latter was a legatee under the will of William King, deceased?

Answer. I do not distinctly recollect; but I think Col. White did mention that he either had or could have the interest of one of the claimants of King's estate, which was adverse to William King's. If I recollect rightly, the purchase of adverse interests was contemplated under the contract of White and King.

Question by same. In July, 1824, when you were in Abingdon, and had advised William King not to confirm the contract with White, did you or not inform White that you had acted under false information when you made the endorsement on said contract?

Answer. I did not while at Abingdon. I told Col. White in the winter of '27–'28, or '28–'29, that I had advised William King, while at Abingdon, not to ratify it, but whether I gave my reasons for the advice I do not recollect. I thought it was then useless, as I understood that he had ratified it at full age, under a knowledge of all the facts that I knew.

Question by same. Did Col. White, according to your present recollection, act with great apparent caution and circumspection, or did he communicate fully, freely, and candidly about all William King's interest? and (the mind, character and condition of the parties considered,) was William King able, knowing, and otherwise placed on such grounds as gave him a fair and equal chance in making the contract with said White?

Answer. The communications made by Col. White to me were apparently designed to complete the contract with said King; it was full and free thus far; but if the whole facts had been communicated to me, I surely would not have advised the contract. With regard to King's ability then to bargain with Col. White advantageously, considering their respective ages, business habits, or knowledge of King's real interest, it would be like putting a Lilliputian in contact with a giant. The great reason why the contract was advised by me was, that the array of talent, money, and numbers, against King was great; and thus having no man of sufficient money connected with him to undertake the prosecution of the suit, being himself

destitute of business habits, it was deemed advisable to sell an interest to Col. White, who seemed a fit man for the office.

Question by same. Do you or do you not know, that, about the time of making said contract, and some time afterwards, that said King was greatly under the influence of said White? and state if you know any thing of King's indebtedness at Col. White's store in Abingdon, at the time of your visit in 1824?

Answer. He seemed very *friendly* and confiding in Col. White at the making of the contract, and in July, 1824. I understood that in July, 1824, he was indebted to Col. White some five thousand dollars for advanced money, &c., on the contract.

Question by the same. Had King lived extravagantly in his expenditures after making said contract, and did he not seem buoyed up in his idle expenses by a confident hope of holding the devise made to him by his uncle, William King?

Answer. I think he remained, after the contract, much as he was before; not having made any money, he had not learned to take care of it. From frequent observations for the five previous years of said King, I believe he thought he never could spend all his money.

Question by counsel for White. Will you state your relationship to the complainant?

Answer. I am his maternal uncle.

Question. Was not Thomas Claiborne in Huntsville, on the subject of said contract, previous to William King's coming to Huntsville on the same business? did not said Claiborne have frequent conversations with Col. White on the subject of his purchase of King's interest in said salt works previous to King's arrival? and did not Claiborne return to Nashville previously?

Answer. In answering this question formerly, I did not recollect, but since that time I referred to my file of letters, one of which I here append, marked A J H L, written by Thomas Claiborne, and can now say, that I was in Nashville about 10th of March, 1823, when Thomas Claiborne first authorized me to make some propositions to Col. White in regard to his, Claiborne's wife's, interest in the salt works. Thomas Claiborne did not visit Huntsville during that negotiation. I made the proposition which Claiborne first authorized me to do, in March, and was informed by Col. White that he would not buy Claiborne's interest unless he bought part of King's. Of this I advised Claiborne; shortly after which I received the forementioned letter from Claiborne, by William King, and, from written memorandums I have, I find we, to wit, Col. White, William King, and myself, sat out for Nashville about 13th March, 1823. I did not visit Nashville on that business, and never believed, until the contract was ready to be signed, that I would be required to give my assent in any manner to it. After my arrival in Nashville, and until it was drawn up, I was not privy to the negotiation, nor much in company with the parties, until I was called on to make my endorsement of assent. At first I utterly refused, because I knew nothing about the business, except what Mr. Claiborne and Col. White informed me. Mr. Claiborne urging the matter most strenuously, and having full faith in the information given by Col. White and him, I endorsed my assent, without which Col. White refused to ratify the contract. I will here observe, once for all, that I had no knowledge of the relation which Col. White bore to William King. From him (Col. White) I learn-

ed that the property was greatly depreciated in value; that the sales of salt had greatly diminished, and that it was not worth more than two hundred thousand dollars; that William King's interest would be sacrificed if not diligently attended to; that the heirs of King were numerous, and would take every probable pains to defeat his interest. In the whole of White's statements Claiborne coincided. The contract between King and White was ratified in about 36 hours after our arrival in Nashville. I think James Trimble was employed to draw it up. I do not recollect if he, Trimble, ever advised it, for I staid in the office but a few minutes. After the ratification of the contract I returned to Huntsville, and did not see the parties (if I recollect rightly) until latter end of June, 1824, when I visited Abingdon, on business, and, for the first time, to my surprise, learned the true relation which Col. White bore to William King, and learning from a source I would not doubt, other important facts, which were not communicated to me at the making of the contract, I felt incensed at the circumstance, and went to William King, advised him not to ratify the contract, and offered him money to refund Col. White his advances. I found him impatient of my advice, much devoted to Col. White, and in a state of comparative alienation to those of his relations in Abingdon in whom I thought he should have confidence. King spoke of a partnership in business with Col. White, which he said was promised him, and the steps which he, White, had taken to secure a decision in his, King's, favor, (in the suit pending against King's heirs) by his having given employ to the judge's son, &c. The proposition in regard to the money he refused, and said he was satisfied with the contract, and that he would think himself a rascal if he refused to ratify it when of full age; this was shortly after 4th July, 1824. King's abrupt refusal prevented any further interference on my part, and I left him in disgust at his stupidity, and saw him only for once afterwards, in August, 1824, and then only long enough to have a quarrel with him; after which time I never spoke to him until he visited this place, in August, 1828, to take my deposition. Col. White insisted on my assent to the contract. I presume his motive for doing so was to exempt himself from imputation in dealing with a minor. I was not King's guardian, and had only casually heard of his prospects for fortune, and for any information I had I was indebted to Col. White and Mr. Claiborne, King's stepfather. I have previously said that I recommended and advised King not to ratify the contract at full age, and stated to him that I had ascertained, since my arrival, the existence of certain facts which I did not know at the time the contract was made. I do not recollect that I told him in detail what they were, but I well recollect that I told him that he had been defrauded of his property, and that I wished, while I had it in my power, to exempt myself from blame in having originally advised it. It was this motive which induced me to offer him the money to refund Col. White his advances; he having refused my offer, I observed, that I hoped he would never blame me about the matter; he replied he would not. I do not know when King removed to Abingdon; I found him there a married man, in July, 1824, and not quite of age. I do not recollect when I heard King was dissatisfied with his contract. I don't think I ever heard of his being dissatisfied with his contract before August, 1828, but I had not seen him since August, 1824, and had no correspondence with my relations in Nashville, and had not been in Nashville subsequent to February, 1825. I do not know that King knew Judge Haywood's opinion, but presume that he must have known it. For any facts omitted

here, I here refer to my deposition taken 8th August, 1828, taken before Robert D. Middleton and Richard B. Purdon. I believe that the contract would never have been entered into if the pecuniary embarrassments of Claiborne had not urged it, but of which I was at the time ignorant, not residing in Nashville; and further this deponent saith not.

JOHN H. LEWIS.

Acknowledged and sworn to before us, this 14th day of August, 1830.

PHILIP A. FOOTE, *J. P.* [L. S.]
WM. BARKER, *J. P.* [L. S.]

The above deposition we hereby certify was this day sworn to before us, at the office of John H. Lewis, in Huntsville, Alabama, we being acting justices of the peace, for the county of Madison, and State of Alabama, this 14th August, 1830. Witness our hands and seals.

PHILIP A. FOOTE, *J. P.* [L. S.]
WM. BARKER, *J. P.* [L. S.]

The following is a copy of the letter referred to by John H. Lewis in his answer to the second question put by Col. White's counsel in the foregoing deposition:

Claiborne's letter.

NASHVILLE, *3d April*, 1823.

DR. SIR: I wrote you yesterday by Mr. Erwin; about an hour, or perhaps less, after he had started, I received yours of 26th ult., containing $100 for J. L. Crow, whom I have not yet seen, or I would have forwarded to you his receipt for the money.

You inform me that Col White will not give me more than $15,000 for my interest in Saltville, unless I would wait one, two, and three years from 1st September, 1824, in which case he would give me $18,000. This I will not do. I have commenced my preparations for a removal to Abingdon, to take upon myself the management of my interest there. I know that my interest is worth what I asked Col. W. for it, and more. I wished to divest myself of all concern in the saltworks that I might be less embarrassed in the settlement of James King's and William Trigg's estates; to accomplish which, I was ready to make considerable sacrifices. Moreover, I have no wish to remove from this place if I could avoid it, and, on this account also, I was, and am, prepared to make some further sacrifices rather than break myself up, in doing which I should sustain considerable losses in the sale of my furniture and other things that could not well be removed. All these considerations are fully seen and understood by me. I now, therefore, authorize you to say to Col. White, that he may have my interest in Saltville for $18,000; one-third down, one-third 1st September, 1824, the remainder 1st September, 1825 or '26, all to be paid in current funds of the United States. You are authorized to vary this proposition so as to make the second payment on 1st January, 1825, and the next payment may be made correspondently, with a view to an indemnity to Col. W. for the interest on his advance to me. If Col. W. now accepts this proposition I wish to be informed thereof, and to make the necessary arrangements, that I may start to Virginia the middle of next week, in order that I may have a bill filed there, returnable to the next chancery court at Wythe. I find I can better spare the time to go there now than in May, by the last of which

I wish to return. You have not much to do; suppose you come, and go with me; I want to take Elizabeth along for school. I suppose that in the event William King be only a general legatee, that 15 or 20,000 dollars would be the worth of his interest. I would advise him to take that sum, receiving for two years to come only a small sum, say $500 a year, the balance then to be paid in such way as to enable him to go into some business. I wish, if these arrangements are made at all, that Col. W. and yourself, with William, should come to this place, for the purpose of closing the business at once, that I may proceed without delay to Virginia on the other branch of my business. This proposition is the last and only one I will make; and, if made, is to be exclusive of my interest in the present lease. William might well afford to take $50,000 for half of Saltville alone, Col. W. paying all costs in prosecuting his claims under the direction and assistance of William's friends. William wants such aid as Col. W. could and would afford. Poor Washington—can you do nothing to save him from ruin? He is anxious to do every thing in his power. How the injury could be reinstated, I am at a loss to know. Your friend,

TH. CLAIBORNE.

The deposition of Ann C. Goode, taken in pursuance of the notice annexed herewith, and of the commission herewith enclosed, to us directed, by authority of the President of the United States, by John Foster, deputy clerk of the United States, for the district of Virginia west of the Alleghany mountains, we have caused the said Nancy or Ann C. Goode to appear before us at the house of John Goode, between the hours of 9 o'clock A. M., and 6 o'clock, P. M., of lawful age, who, being duly sworn upon the Holy Evangelists of Almighty God, deposeth and saith:

Ann C. Goode's deposition.

Question 1st, by plaintiff's agent, McCall. Please state the terms of a proposition made by Col. James White to buy your interest in Saltville, and state the time and place?

Answer. This deponent saith, that, in the winter of 1824, or spring of the year 1825, as she believes, she was living at White's iron works; when Col. James White was at her house, she asked him what he would give her for her interest in the saltworks. His answer was, that he would give her as much as he would give any of her mother's children, which her understanding was six thousand bushels of salt each. She also states she understood that to be the amount from his, Col. White's, own mouth; and she also saith, she understood from Col. White six thousand bushels salt to be the amount White offered Littleton Henderson, who married her twin sister.

Question 2d, by same. Please state the subject of Col. White's conversation to you and Mr. Goode previous to your asking Col. White what he would give for your interest?

Answer. It was relative to the purchase he had made of William King which drew her question from her to Col. White.

Question by defendant. Please state, are you not the daughter of Connally Findlay, who married William King's, deceased, sister Nancy; and are you the wife of John Goode?

Answer. Yes.

Question 3d, by plaintiff's agent, McCall. How many children had Connally Findlay? how many are deceased, and have the deceased left heirs?

Answer. Eight children; two are deceased, and both have left heirs.

Question by defendant. Can you say positively, that I intended to say the six thousand bushels of salt should be for your father's or mother's interest, entire, and of that quantity you would get as much as any of your father's children?

Answer. That was not my understanding of the conversation; but what Col. White intended or meant, I know not. And further this deponent saith not.

ANN C. GOODE.

Sworn to and subscribed in presence of plaintiff and defendant, before us, this 15th August, 1829, and sealed by us.

JOHN McCULLOCK, *J. P.*
WM. S. LOGAN, *J. P.*

VIRGINIA, *Washington county*, to wit:

Pursuant to the within commission, we, Stephen Jett and Nathaniel Dryden, justices of the peace for said county, in the State aforesaid, have, on the 20th day of August, 1828, at the tavern of Augustus Oury, in the town of Abingdon, in the county and State aforesaid, between the hours of 9 o'clock A. M., and 7 o'clock P. M., have proceeded to take the deposition of John Goode, a witness for the complainant, William King, in a suit now depending in the United States' court for the district of Virginia west of the Alleghany mountain, wherein the said William King is complainant, and James White defendant.

John Goode's deposition.

The said John Goode, who is of lawful age, being by us first duly sworn, deposeth and saith: That, for three years, he was in the employment of Col. James White, at Saltville, and at his iron works. Whilst at the iron works Col. White and myself had a conversation relative to his purchase of William King, and Thomas Claiborne and wife; he named that he had been in some dread relative to his situation in life; that he owed a great deal of money, but this would bring him out; that he was to give Claiborne $18,000, and William King $15,000 for their interest, and that they would be on here, and thought he could pay them off in some trade that he would not miss much. William King came on to Abingdon, and when I saw Col. White some time after, he told me that he had sold King Wallace and two bay horses from Saltville, for $1,000. I then thought the Col. was using his traffic to the best advantage; he further named that he was to bring suit for the whole of the estate of William King, deceased. I named, then you won't give me any thing for my interest in the estate? Yes, I will give you as much as I would any of Mrs. Findlay's children. My wife inquired what is that? Why, I offered Henderson 6,000 bushels of salt, and I will give you the same. I said, you think the chance but dull to recover the whole, Col. White, and I won't take it. He said he had got their interest for a very small sum, and would buy the interest as long as he lived of the other legatees. I claim no interest in the estate until the death of Mrs. Smythe.

Question by complainant's attorney. What interests were they that Col. White told you he had purchased from William King?

Answer. He had bought William King's interest as devisee of his father for $15,000, and if he recovered the whole of the estate of William King,

deceased, I think he said he was to give said King something like fifty thousand dollars for it, I think inclusive of the above $15,000.

Question by same Did Col. White, in any of his conversations on this subject, tell you whether he expected to succeed in gaining the suit for William King, for the whole of William King's, deceased, real estate or not? Please to state all that he said on this subject.

Answer. He said he thought the chance bad, but the suit would, he thought, cost him about $1,200, which was very inconsiderable to the bargains he was getting from King and Claiborne.

Question by same. Did he say in these conversations whether he had got William King's interest, as devisee of his father, at a low rate, or that he had given its full value for it?

Answer. All his indications were, that they were bargains that suited him extremely well.

Question by same. Did he express to you at any time his opinion of William King's intelligence in making bargains, as to the value of property, and the value of money; if he did, what was that opinion?

Answer. He said they were living in Nashville, and knew not much the value of property, or what money was for.

Question by same. How long were these conversations after Col. White's purchase from William King?

Answer. I think the first time he visited the iron works after his return from Nashville, or the west, or at the time after he had made the contracts with King and Claiborne.

Question by same. In what capacity were you employed by Col. White at Saltville and the iron works?

Answer. At Saltville as a superintendent of making salt, and keeping the well in repair, under a manager; whilst at the iron works, about 18 months as sole manager.

By defendant. Was there any person present when this conversation that you say took place between you and me?

Answer. My wife present in the house we lived in at the iron works; and the balance on the road leading to Abingdon, as we rode about four miles together.

Question by same. Can you name any respectable person in the State of Virginia to whom I expressed myself similarly, either as to my opinion of the claim of William King being bad, or as to my situation being doubtful, as you have stated?

Answer. I cannot; for as I considered myself interested in the estate of William King, deceased, at the death of Mrs. Smythe, I always made inquiry how the matter was going on relative to the estate.

Question by complainant's attorney. Was Mrs. Goode present at all the conversations you had with Col. White on this subject or not?

Answer. No; only at a part. She was present at the house we lived in at the iron works, when Col. White named he would give me or my wife as much as he had offered Henderson; the balance of the conversation took place between the iron works and where Robert Goode now lives, then owned by John Manifee, distance about four miles.

Question by defendant. Did William King reside the principal part of the year 1823 and 1824, in Abingdon, and the county of Washington; and did he not marry in the county of Washington, Virginia?

Answer. He married in the town of Abingdon, and was in the county.

I believe, a good part of the time mentioned by Col. White, say 1823 and 1824.

Question by same. Do you know that Capt. Smith and agents were digging for salt water, in his own land near Saltville, previous to my purchase from William King, and at the time?

Answer. Yes.

Question by same. Do you know, or do you not, that I apprehended great danger of competition from that source, and that I offered them 20,000 bushels of salt if they would desist?

Answer. I don't know what your apprehensions were; but I recollect hearing a rumor about Saltville, that you had made Bell & Kincannon an offer payable at the end of your lease at Saltville, in salt, to stop digging for salt; how much I can't tell, but considerable amount.

Question by same. Has Capt. Smith and agents, Bell & Kincannon, succeeded in getting salt water?

Answer. No.

Question by complainant's attorney. Had not Capt. Smith, for a number of years previous to 1823, been boring for salt water on his land without success; and has he not since generally continued to bore or dig for salt water without success?

Answer. I came to this country, say Saltville, in 1821; they were still boring on Capt. Smith's land, and continue to this time without success. But a part of this time the prospect was thought to be good for salt, say at the time Bell & Kincannon were digging. Further this deponent saith not.

JOHN GOODE.

VIRGINIA, *Washington county*, to wit:

We, Stephen Jett and Nathaniel Dryden, justices of the peace for the county and State aforesaid, hereby certify that the foregoing deposition of John Goode was taken before us, at the tavern of Augustus Oury, in the town of Abingdon, in said county, on the 20th day of August, 1828, in the presence of the attorney of the complainant, William King, and of the defendant, James White. Given under our hands and seals, this 20th August, 1828.

STEPHEN JETT, [L. S.]
N. DRYDEN, [L. S.]

John Goode's second deposition.

VIRGINIA, *Washington county*, to wit:

Pursuant to an adjournment made by consent of parties in the cause depending in the United States district court for the western district of Virginia, wherein William King is complainant, and James White is defendant, the said parties having, on Saturday, the 21st day of August last, proceeded to take the deposition of Benjamin Estill, a witness for the complainant in said cause, and having adjourned the taking of other depositions, by consent of said parties, until the 4th day of September, 1830, the said parties have, on this said 4th September, 1830, met pursuant to the said adjournment, when, by consent of the said parties, Jacob Lynch was chosen as commissioner to take the depositions this day. Whereupon, John Goode, a witness of lawful age for the complainant, being first duly sworn, deposeth and saith: That, in the year 1823, deponent went to live at the iron works of the defendant in the county of Washington, and that, some time during

the next year, shortly after the defendant had returned from the western country, he and this deponent had a conversation in relation to the saltworks, in which conversation defendant stated that whilst he was in Tennessee, he had purchased the interest of the complainant, as devisee of his father, in the saltworks, for the sum of $15,000, and that he had also purchased the interest of Thomas Claiborne and wife for the sum of eighteen thousand dollars. He also stated that he made a contract with William King, by which he was bound to bring a suit for the purpose of recovering the whole of the saltworks, or having the question decided whether the complainant would take them under the will of his uncle William King, deceased, or not, and that he, the defendant, was to be at all the expense in prosecuting the suit; if the complainant recovered or took the salt works under the will, that then defendant was to pay him fifty thousand dollars, and to be entitled to one-half of the salt works. Deponent's wife then made mention that, you will give us nothing for our interest; to which the defendant replied, Yes, he would give her as much as he ever would have given her, or any of the children of Mrs. Findlay, and that he had offered Littleton Henderson, who married a daughter of Mrs. Findlay, and sister of deponent's wife, six thousand bushels of salt for his interest. Defendant also then stated that he had already vested a great deal of money in the saltworks, and that he was determined "*to buy at them as long as he lived, but that he would own them.*" Deponent and defendant had, on the same day, another conversation about the saltworks and the Kings, in which defendant stated that the Kings were in Nashville, that they did not know the value of property or money, and that they would be on here in a few days, and that he would then pay them off, and would never feel it. This last conversation was between deponent's house, or the iron works, and the place where John Manifee then lived.

Question by complainant's attorney. Did you or did you not, at any time, hear Col. White speak of letting the complainant have a negro man, named James Wallace, and two horses? if you did, state the price at which he, said William King, took them? and say whether, from your knowledge of the property, it was a high price or not?

Answer. Colonel White told deponent that he had sold William King the negro man named Wallace, and a pair of bay horses, for a thousand dollars. The horses, I suppose, were worth about one hundred dollars each; one of them I know cost eighty bushels of salt, and I thought him well bought, or low enough at that price. The negro was capable of being a good servant, but was addicted to drinking and running away, and I thought the price an extravagant one. I think the negro man was not worth more than $450. Deponent knows he cost the defendant $600; and his estimate of his value is made from the knowledge of deponent that he had runaway from defendant, and put him to a great deal of trouble and expense in recovering him. If clear of those faults, deponent would have considered him worth $800 or $1,000.

Question by same. Did you or did you not hear Col. White, during either of the conversations, express his opinion in relation to the bargain he had made with William King, for the purchase of his interest as devisee of his father, James King? if you did, what opinion did he express?

Answer. He said he had made a good bargain.

Question by same. Were you for some time a manager of part of the business at Saltville for Col. White? if so, what did you attend to?

Answer. I was, and attended to the making of salt, to keeping the well in repair, and a variety of other things.

Question by same. What was the greatest quantity of salt made per day for any length of time while you acted as one of the managers at Saltville, according to the best estimate you could make?

Answer. We thought while Bell was drawing at Preston's well, that we made a thousand bushels a day; and I think that quantity can be made at any time with the same furnaces, being five, when they are drawing at Preston's well.

Question by same. If the furnaces were enlarged, could or could not (from the opinion you have made up from actual observation and experience of the capacity of King's well to furnish water) much more salt be made out of King's well?

Answer. Yes, there is a sufficiency of water to make three times as much.

Question by same. What is the estimated cost of making salt at King's well?

Answer. I think twenty-five cents for a bushel, or fifty pounds weight.

Question by same. Is it your estimate that it would cost 25 cents in actual cash, or in salt at $1 25 a bushel, and merchandise at high prices?

Answer. It is at the rate that Col. White paid, to wit: for labor, in salt and merchandise, and cash paid to the managers, and also cash paid for the hire of about thirty negroes.

Question by same. Was the merchandise paid by Col. White to his hands, sold to them at higher prices than the usual Abingdon prices or not? if at any higher prices, what was the usual difference?

Answer. The prices were considerably higher than the Abingdon prices, but cannot say what was the difference.

Question by defendant White. Do you know in what manner I paid William King the amount I was to pay him for the purchase of Saltville, as per contract?

Answer. No, only the negro and pair of horses.

Question by same. Was not one of the carriage horses taken from my stock of horses at Saltville? (number about eighty;) and was he not one of the very best of the number? and were they not a well matched pair?

Answer. They were well matched horses, and the gayest ones there; but there were other horses there that I would rather have had for service for the wagon.

Question by same. Was not Wallace a handsome mulatto man, a first rate carriage driver, waiter, &c.? and do you not know or believe the reason of his running away from me, was because I made him work out on the farm? did you ever know him to runaway before I got him, or since he has been sold to William King?

Answer. He is a likely mulatto, and under character of a good carriage driver, and waiter. I did not know him before Col. White got him; and understood that the reason of his running away was because Col. White put him to work on his farm. I have not heard of his running away since he belonged to William King.

Question by same. Do you know that William King spent the greater part of the years 1823 and 1824, in and about Abingdon? and visited the saltworks frequently in the time? and were you not directed by me (you having married his cousin) to treat Mr. William King with attention at all

times when he saw proper to visit the works? and to show him all about the establishment?

Answer. I know that he was about Abingdon at that time; and frequently visited the saltworks; and did show him all about the establishment as far as he enquired, or I could inform him; and I was directed to do so by Col. White.

Question by same. What would be the effect of the salt business at Saltville if Saltville was worked in three different shares, and Preston's works also worked separately? say the annual effect? and also on the value of the property to purchase or sell?

Answer. It would not be very profitable, because either share or party could supply the demand for salt. The annual worth would not be more than one-third what it now is, in the way Col. White has it monopolized. It would make the same difference, I presume, in the purchase or sale of it.

Question by same. Do you know at what rate of rent Saltville has been for some years past?

Answer. Since 1824 about eighteen thousand dollars; from 1819 to 1824 I understood it rented for thirty thousand dollars annually.

Question by same. Was there not strong expectations of other salt establishments in the neighborhood of Saltville in 1823 and 1824? and did I not offer one of them 20,000 bushels of salt if they would desist operations?

Answer. There was considerable expectation of getting salt several places in the neighborhood when experiments were making; and I heard Joseph Bell say that Col. White offered him a large sum if he would desist from any further effort, which Bell refused. Bell was one of the persons who was making experiments on Capt. Smith's land, in sight of Saltville, and had a lease from Smith for a number of years, in case he succeeded in getting salt water.

Question by same. What would have been the effect on the annual value of Saltville if Capt. Smith, or his agent, had have succeeded in 1823 or 1824, in getting good and plenty of salt water?

Answer. It would have made a considerable difference as to the value of it. I cannot say how much, but suppose it would have reduced its value one half.

Question by same. Was there not cash generally paid for grain and meat at Saltville, whilst you acted as assistant manager?

Answer. There was cash paid for a large quantity of grain, at least two-thirds of the supply, to Major Taylor; and some cash paid for pork.

Question by complainant's attorney. Was any book kept at Saltville while you were assistant manager there, showing, accurately, the amount of all the expenses incurred in manufacturing salt?

Answer. There was a book kept of all expenditures.

Question by same. Was ever that book settled up at the end of each year, for the purpose of showing, by actual account, what the manufacture of salt cost by the bushel?

Answer. Not that I know of.

Question by same. Did you ever ascertain what the amount of these expenses were for any one year?

Answer. No.

Question by same. Was all the salt manufactured at Saltville sold there, or were not large portions taken down the Holston and Tennessee rivers, to Tennessee and Alabama?

87.

Answer. There was but a small quantity sold there to what was freighted off.

Question by same. Was ever any book kept at Saltville showing the proceeds of all the salt taken down the river?

Answer. I think not. Col. White, I believe, when his salt got into market, made his sales for the best prices he could obtain.

Question by same. Did you ever have any means of ascertaining what the neat annual proceeds of the saltworks were?

Answer. No.

Question by same. Could you then give any certain information to William King on these subjects?

Answer. From information from Col. White and others. It was said to be profitable from the monopoly, but to what amount I cannot tell.

Question by same. Was William King, in 1823 and 1824, a steady, industrious youth, attentive to his business and interests? or was he of remarkable careless indolent temper?

Answer. He was remarkably careless and indolent.

Question by same. Were the visits he paid you at the saltworks, visits for the purpose of making careful inquiry of you relating to the business at Saltville? or were they visits to you as a relation, for the mere purposes of pleasure?

Answer. They were visits for purposes of pleasure.

Question by same. Have you or have you not understood that many persons have been exploring for salt for the last 30 years through all the surrounding country?

Answer. I have understood so.

And further this deponent saith not.

JOHN GOODE.

The foregoing deposition was taken before me, the time and place mentioned in the caption, and duly sworn to before Francis Preston, Esq., a justice of the peace for said county, in my presence, and in presence of the parties.

JACOB LYNCH.

STATE OF TENNESSEE, DAVIDSON COUNTY, ss.

In pursuance of a commission to us directed, from the President of the United States, we have caused to come before us, at the Nashville Inn, in the town of Nashville, Davidson county, State of Tennessee, Charles J. Love, John Shute, and John Thompson, witnesses, on behalf of William King, plaintiff, against James White, defendant, in a suit now depending in the United States Court for the district of Virginia west of the Alleghany mountain, for the said district, at Wythe court-house, who, being duly sworn on the Holy Evangelist of Almighty God to speak the truth, the whole truth, and nothing but the truth, in relation to said matter, deposeth and saith, to wit: Charles J. Love, a witness of lawful age, being sworn saith:

Charles J. Love's deposition.

Question by plaintiff's agent. Are you a neighbor of William King? and are you well acquainted with him?

Answer. I am.

Question by same. What is the general disposition of said King? is he or is he not a very credulous man? and does he not attend to business in a very loose, irregular, and inefficient manner?

Answer. He does.

Question third by same. Is it or not your opinion that he would be very easily duped and imposed on by an artful man? as much so as any man you know?

Answer. I do most positively and sincerely believe that he would be?

Question fourth by same. Is said King not now, and has he not ever since you first knew him, been an extravagant man in his trading habits?

Answer. I think so.

Question fifth by same. How long have you known said King?

Answer. Six or seven years, which commenced before his marriage some time.

And further deponent saith not.

CHARLES J. LOVE.

John Shute's deposition.

John Shute, of lawful age, sworn, and saith, he knows William King, and has been intimately acquainted with him six years and upwards: he believes him a very honest man, having had many dealings with him: he thinks, from experience, that when said King has confidence in a man, or believes him to be a friend, that he could be imposed on and taken in more easily than almost any man deponent knows.

And further deponent saith not.

JOHN SHUTE.

John Thompson's deposition.

John Thomson, of lawful age, sworn, says, he has known William King eight or ten years, intimately for the last six or seven years; has traded with him; and believes that he is strictly honest. In trading with him, deponent always found said King indisposed to look into their transactions with as much care as even deponent wished; and therefore thinks he might be imposed upon and taken in by any one who he considered a friend.

And further deponent saith not.

JOHN THOMPSON.

STATE OF TENNESSEE, DAVIDSON COUNTY, ss.

We, George Wilson and Philip Campbell, acting justices of the peace for the county and State aforesaid, do certify that the foregoing depositions of Charles J. Love, John Shute, and John Thompson, as reduced to writing by George Wilson, were taken before us at the place mentioned in the caption, between the hours of nine o'clock A. M. and six o'clock P. M., of this second day of September, 1829 And we do further certify, that neither of us are related to either of the parties, nor are we of counsel for either of them, or any wise interested in the issue of the cause. And that said witnesses all reside at a distance of upwards of 400 miles from the place of holding said court.

Given under our hand and seals the 2d day of September, 1829.

G. WILSON, [SEAL.]
PHILIP CAMPBELL, [SEAL.]
Justices of the Peace.

Deposition of James L. White, of lawful age, taken at the court-house in Abingdon, this 21st of September, 1829, to be read in evidence for the defendant, in a suit depending in the United States' Court, district west of the Alleghany, holden at Wythe court-house, Virginia, in which William King is complainant, and James White is defendant.

Question by defendant's agent, John N. Humes. You will say whether you know any thing of a contract made some years since, between James White and William King, by which King conveyed to James White one half of his interest in the Saltville estate, as the devisee of his uncle, William King, deceased? Do you know of such a contract?

Answer. I do know that there is such a contract.

Question by same. Do you know whether Will. King ever received any money on said contract? Did you ever pay him any? What was the time and place, and circumstances, of any payment you may have made him?

Answer. I went to Nashville in October, 1824, after said King came of age, but before he had confirmed the contract, and whilst there, I paid him one hundred and fifty dollars on account of this contract; and, I believe, on the agreement, there is a receipt in full for the purchase under that contract, and at the time he confirmed it.

When at Nashville, at the above time, Mr. King and myself had several conversations about his confirming the contract, in one of which he told me that a relation of his advised him not to confirm, but that he would; and told me several times to tell my father not to be uneasy, that he would, so soon as he came to Abingdon; and which I believe he did.

Question by the same. How long from the time of the conversation you mention to have taken place at Nashville, Tennessee, until Mr. King visited Abingdon, and here confirmed the contract?

Answer. I believe it was one or two months. The conversation at Nashville was between the 1st and 10th of October, 1824; and he confirmed as will be seen by reference to the agreement.

Question by same. Were you present when the contract was confirmed? and do you know any of the circumstances and conversations which occurred at the time, or immediately preceding, the confirmation of said contract?

Answer. I was not present; neither do I know of any of the particulars.

Question by complainant's counsel. Did your father instruct you to go to Nashville, among other things, for the purpose of advancing money to William King, in order to confirm the contract? and did he furnish you with a copy of the agreement, in order to enter upon it any money paid to him?

Answer. I went to Nashville on other business entirely. Whether he directed me to pay him any money or not, I do not now recollect; but suppose that he may have done so. He did not furnish me with a copy of the agreement; or did I ever take a receipt from Mr. King for the money I paid him.

Question. What kind of money did you pay him?

Answer. Tennessee money, I believe.

Question. Did Mr. King ask you for money, or did you propose advancing it to him?

Answer. He came to my room, when, I believe, I was counting money, and I then asked him if he wanted any; he said to me, to let him have one hundred and fifty dollars; which I paid him.

Question. In your intercourse with Mr. King about the time the contract aforesaid was negotiating between your father and him, or at any time before its confirmation, did you advise him to make the contract, alleging that he had a powerful connexion interested in the saltworks to compete with?

Answer. I do not recollect that I ever did; but he knew as well as I, that he had a powerful connexion to compete with; and ought to have been more capable of judging than I, being several years older.

Question. Did you ever hear your father urge him to make the contract for these reasons?

Answer. I did not; for the contract was made at Nashville.

Question. Was William King in embarrassed circumstances when the contract was made?

Answer. I believe not; for I had been acquainted with him for some time before; and he had always, as far I know, plenty of money; and was among the best dressed young men at college.

Question. Do you know whether or not he had not anticipted his expected estate when at college? and whether he had not obtained money and goods on credit at Nashville?

Answer. I do not; for I never, that I recollect, had any conversation with him at college about his expectations; nor did I know any thing about his affairs at Nashville.

Question. Did not Wm. King, before he attained full age, create a large debt in your father's store?

Answer. He had drawn, I believe, before the confirmation of the contract, about four thousand dollars; a good part of which went to the payment of fine horses, servant, and a carriage.

Question. What price did he give your father for the servant?

Answer. For a servant boy and two carriage horses, one thousand dollars.

Question. Was there a conversation between you and William King at Nashville, before the contract was confirmed, in which it was stated between you, that your father promised King that, if the contract was made, he would give his interest in the saltworks to one of his children; and that King supposed he would give it to you; and from this expectation, and the intimacy which then subsisted between you and him, was he influenced to confirm the contract?

Answer. I do not think that he and I had any conversation before the confirmation of the contract, about his, Mr. King's, expectations; but after it was confirmed, he told me, as also my father, that he, Mr. King, had wished him to give his interest in the saltworks to me.

Question. What was the discount on Tennessee money when you made the payment at Nashville?

Answer. I got Tennessee money exchanged at 13 per cent. discount.

Question by defendant's agent. You will say whether there was any allowance made by James White to Mr. King, on a final settlement, for *several* sums of Tennessee money he received at different times?

Answer. By reference to the books of James White I find there was one hundred sixty-seven dollars allowed Mr. King for discount on Tennessee money paid him. And further this deponent says not.

J. L. WHITE.

William A. Preston's deposition.

William A. Preston, another witness for the defendant, being first duly sworn, deposeth and saith:

Question by John N. Humes, defendant's agent. You will say whether you ever had any conversation with William King about his contract with James White, by which said King conveyed to said White a part of his interest in the Saltville estate? what was the disposition he manifested in relation to said contract, and at what time and place were such conversations, if any, had?

89.

Answer. I thought, from William King's conversation to me, that he was not dissatisfied with the contract he had made with Col. White, but I do not recollect his having directly expressed himself as satisfied. This conversation took place in 1826; I do not recollect the place.

Question. You will say whether Mr. King did or did not manifest to you a disposition so entirely satisfied with the said contract, as to cause you to express your surprise when you heard that he had filed a bill in the United States' court to have said contract set aside?

Answer. I was surprised when I heard that fact.

Question by complainant. Did not J. L. White, whose deposition has just been taken, marry your sister?

Answer. Yes.

Question. Is your recollection distinct or indistinct about the conversation alluded to?

Answer. My recollection of the conversation is not very distinct. And further this deponent saith not.

WM. A. PRESTON.

The above depositions were taken, subscribed, and sworn to, before us, at the court-house in Abingdon, this 21st of September, 1829.

FRANCIS SMITH,
P. J. BRANCH.

B. Estill's, Esquire, deposition.

The deposition of Benjamin Estill, a witness for William King, the plaintiff in the suit depending in the district court of the United States, held at Wythe court-house, in the State of Virginia, between William King, plaintiff, and James White, defendant, taken at the office of John H. Fulton, Esquire, in the town of Abingdon, at 10 o'clock, A. M., on the 21st day of August, 1830, by virtue of a commission issued from the said court and to us directed.

The said witness, being first duly sworn, deposeth and saith: That, as well as he recollects, shortly after the compromise between John and William Sanders and Col. James White, the defendant in this suit, by which Col. White purchased or procured their lease of King's saltworks, the witness, in conversation with him on that subject, heard him say that he would own said saltworks. This witness thinks he heard Col. White repeat this declaration afterwards, perhaps more than once. This witness has, as he thinks, testified to this fact heretofore, in the suit of McCall and wife against Col. White; which deposition he not having seen since he gave it, he cannot say whether it accords in all respects with his present recollection given in this deposition. This witness is the counsel of McCall and wife in said suit, and considers himself the counsel of the plaintiff in this suit, and dislikes giving evidence in it. The compromise above alluded to took place in the year 1820 or 21, as well as witness recollects.

Question by defendant, White. In any conversation you have had with me on the subject of the saltworks, have you heard me intimate any intention to obtain them by any unfair means?

Answer. I never have.

Question by same. What was the general report in the country in relation to the solvency or insolvency of William King's estate at the time the

securities of James King and William Trigg, (executors of William King, deceased.) obtained an injunction on the proceeds of Saltville?

Answer. As far as I know it was the general belief and report, at and before that time, that the executors had committed devastavits to a great amount, particularly the executor Henderson, who was the executor of the will of William Trigg, the surviving executor of William King, and that the personal estate of William King was exhausted, or nearly so; of course that his personal estate was insolvent, there being, as was understood, debts to a large amount, probably $200,000, still unpaid.

Question by same. Was there not many judgments and executions against said estate unsatisfied at the above time?

Answer. I believe there were; the records of the court will afford the best answer to this question. I also believe that debts could not have been collected from the personal representatives of William King about the time of said injunction, to any considerable amount.

Question by same. Was you not attorney for several of the creditors, and what was your prospects of collecting the money from the estate previous to the injunction and my being appointed receiver?

Answer. It is probable I was the counsel of several creditors of that estate, though I do not at present recollect any one of them but the case of Gordon, Trokes & Co., and I believe I became their counsel after the injunction was obtained. I have already said that I do not believe, that, for sometime prior to said injunction, debts to any considerable amount could have been collected from the representatives of that estate; after the injunction, there was no difficulty, nor do I recollect that there was complaint of Col. White on that subject, except perhaps that he did not pay quite as fast in some few instances as the creditors wished, owing, as he said and I believe, to the fact that much of the avails of Saltville were received in Tennessee and other depreciated money, which the creditors generally would not receive, and Col. White converted it into good funds by the purchase of cotton in the south, which he sent to the eastern cities, and drew for the funds in favor of the creditors; this necessarily produced some delay.

Question by same. Was there not measures about to be adopted by the creditors to subject the real estate to the payment of the debts of William King, deceased, or suing the securities at and before the injunction? and did not ruin and destruction appear to be inevitable to the securities of the executors of King and Trigg, among whom you and myself were numbered, and were you not among the foremost to advise this course?

Answer. I believe that suits had been brought in the high court of chancery for that object; I also believe that the securities were threatened by the creditors; being one of those securities, I frequently and earnestly recommended that the injunction finally obtained should be applied for. I remember to have so advised Col. White, who is co-security, and as far as I remember, I was the first to suggest that course, though I think Colonel White had also advised with Major Shiffey, who probably advised the same. It was my understanding that I was to appear as counsel in the application, but, from some misunderstanding, I was not employed and did not appear in the case either as counsel or party.

Question by same. After the injunction was obtained, and I was appointed receiver, did I not give general satisfaction to both court and creditors?

Answer. Yes, as far as I know.

Question. Did you ever, after this event, hear a doubt expressed but the debts would be paid, and the estate and securities both saved?

90.

Answer. I do not remember that I ever did. It was the general opinion, as far as I know, that all would go right after Col. White's appointment as receiver, and that the debts would be speedily paid from that fund.

Question by same. Was not there great confidence in my habits of attention to business, capacity to manage such concerns, and my own competency of funds?

Answer. There was. I shewed my own confidence in the receiver by advising his appointment, and becoming one of his securities, as I believe.

Question by same. Can you say any way near what I was supposed to be worth at the time I was appointed receiver to King's estate?

Answer. I do not remember to have heard Col. White's estate estimated by any person, though it is probable I have; he was at that time reported to be one of the wealthiest men in Virginia. I have frequently heard it said that his annual income, independent of speculation made by himself, was between thirty and forty thousand dollars, arising principally from money in the funds; if this estimate is correct, he must have been then worth between five and six hundred thousand dollars.

Question by same. Was you not present in court when the injunction was obtained? do you know how it happened that it was ordered I should have no compensation as receiver? or do you know the court was about to appoint the marshal, for whom I was security, and therefore I might be liable to trouble, and perhaps loss? that sooner than risk this, I told my counsel, Major Sheffey, I would do it for nothing?

Answer. I was present in court when the injunction was granted, but do not recollect the reason that he undertook the receivership without compensation. I recollect that Col. White was, and I believe still is, the security of the marshal of the high court of chancery, and that there was something said about appointing him receiver. That the marshal appeared to wish the appointment, to which there seemed to be objections by some of the plaintiffs in the injunction, and I believe some of the marshal's friends. My recollection does not enable me to say that the reason assigned in the question for Col. White's undertaking the receivership without compensation is the true one, but think it probable it is. Not being engaged in the cause, I did not pay that attention to the proceedings that I otherwise would, but I recollect that both Major Sheffey and myself repeatedly gave Col. White our opinion that if he managed the receivership properly, as we did not doubt he would, the court would ultimately allow him reasonable compensation for his trouble.

Question by same. Have you not known the plaintiff, W. King, from his infancy? did he or not reside in this place (Abingdon and county) after having finished his education at Greenville college, the principal part of 1823 and 1824? and did he not marry his wife in this place in 1824, a short time before he was of age? and had he not a fair opportunity of knowing the value of Saltville from his relationship and intimacy with the claimants and managers of Saltville?

Answer. I have known the plaintiff from his infancy. I think in 1811 or 12, his mother, then a widow, removed with her family from Abingdon to Nashville, where they resided ever since, as I have understood. My memory does not enable me to say that the plaintiff resided in Abingdon the greater part of the years 1823 and 4. I remember that several years ago he came to Abingdon whilst a minor, as was said, and married a Miss Bekem, a resident of that village; he probably then remained a considerable

length of time, but how long, or in what year or years, I cannot say; his opportunities of knowing the value of Saltville were the same, as I conceive, as that of any other person. He might have visited the works, and inquired of the managers their value and proceeds; I do not know that the managers, or others then concerned, would have afforded him any information or opportunity of knowledge as to these works that were not common to others.

Question by same. Was not Thomas Claiborne, who married the plaintiff's mother, and *with whom he resided when in Tennessee*, in possession of one-third of King's saltworks ever after he married James King's widow, mother of the plaintiff? and say, as near as you can, the year Thomas Claiborne married William King's mother?

Answer. I suppose Thomas Claiborne intermarried with plaintiff's mother, in Nashville, about the year 1813. I have heard and believe that the plaintiff has resided with Mr. Claiborne, after his marriage, until the plaintiff's marriage. Thomas Claiborne never, to my knowledge, had actual occupancy of Saltville, but it has always been understood that he managed the interest of James King's representatives (being one-third), in them, renting that interest for many years. I have never been in Nashville since the marriage of Mr. and Mrs. Claiborne, and can only speak on these subjects from information. I have resided in Abingdon since 1810, and, as I understood, Thomas Claiborne and family have resided constantly in Nashville since his marriage. Charles S Carson was left executor of J. King's will, and managed that interest until his death in 1815, as I believe; after which Thomas Claiborne managed it until 1824, when, by some contract with Col. White, it became his, as Col. White contends; Claiborne's management ceased about that time as is understood. The plaintiff is the cousin of the children of Conally Findlay, deceased, who have constantly resided in and about Abingdon, and are the nephews and nieces of William King, deceased; Francis Smith, who intermarried with the widow of William King, has resided in and near Abingdon for many years, probably thirty, and has had much concern with the saltworks in managing the same; and William Trigg's family have also resided in Abingdon for a great many years, to whose father one-third of Saltville is devised by William King's will, and whose mother is the plaintiff's cousin; but, from what I have seen and heard, I am of opinion that the claimants of Saltville consider their interests frequently at variance with each other.

Question by the same. Does not the value of the saltworks in this country principally depend on the monopoly—as Saltville is subject to be divided into three shares, either of which share is capable of making more salt than the consumption requires? you will also state the situation of General Preston's saltworks by Saltville, and the capacity of his works to supply the demand?

Answer. I have never had any connexion with saltworks of any kind, or personal knowledge of them, other than that derived from my residence in a county affording two, supposed to be equal to any in America, and my engagements as counsel in suits respecting these works, in which there is much proof relating to this question; but I have always understood and believe that what is called King's works could supply a market much more extensive than that supplied by it; of course the value of works thus situated must materially depend on the monopoly of the manufacture and market; I suppose that one-third the interest in King's well could supply the

91.

market. Gen. Francis Preston has saltworks adjoining King's; he dug a well some years ago within fifty yards of King's well, as I suppose, and employed Joseph Bell to manufacture for him 70,000 bushels annually for five years. When this contract was made with Bell, the water in both wells was believed to be equally good, but on experiment that in Preston's was found to be greatly inferior to King's, and during upwards of a year that Bell worked them, could not be made equal to King's by every effort employed by him, though the water was, during Bell's occupancy, improved in strength, as was proved in a case in the high court of chancery between Col. White and Bell and others: the parties compromised that suit. Col. White rented Preston's well ever since, till lately, and no further experiment testing the strength of that water has been made, as far as I know; it is, however believed, that water equal to King's may, by digging new wells, be got on Preston's land adjoining, of which he owns a large tract, but that is entirely uncertain.

Question. What would be the effect of such competition on the annual profits, or the entire value to sell or purchase the interests in the above works?

Answer. I cannot say. It would depend on the management of those concerned. I suppose competition would necessarily lessen the value of the manufactured article, and, of course, if continued, the value of the estate yielding salt; but to what extent this injury would result, must depend materially on those controlling the manufacture.

Question by complainant's counsel. Is or is not the market supplied by King's works, a very extensive one? and has not the business for the last ten years, particularly as conducted by Col. White, by connecting it with speculations in cotton, and purchases of real property, rendered it so intricate and multifarious that nothing short of an accurate examination of all the saltworks' accounts, would enable any one to estimate the value or the productiveness of the property?

Answer. The country supplied with salt from these works, is, part of southwestern Virginia, part of Tennessee, and part of Alabama, as I have heard. I believe this is the country, that, so far as populated, has always been supplied from these works since their operation. I have understood that Col. White has been for many years in the habit of purchasing cotton and lands in the western and southern country with salt, to a great extent. I suppose that no means other than an account of these multifarious transactions, would enable any one accurately to ascertain the annual profits of Saltville, if these speculations compose a part of those profits. The country supplied is extensive; but the extent of it has varied, as I am informed, at different times.

Question by same. Have you been the counsel of King's representatives for some years, in the cause now depending in the superior court of chancery, holden at Wythe court-house, wherein the securities of James King and William Trigg, as executors of William King, are complainants; and the representatives of James King and William Trigg are defendants, in which case Col. White was appointed receiver by said court?

Answer. Yes, for many years; how long I do not recollect.

Question by same. Are or are not the accounts of the receiver still unsettled, or are they not intricate and involved; and can you, whose duty it has been to inform yourself as accurately as possible on the state of that account, pretend to estimate within many thousands, the manner in which it will be finally settled?

Answer. Those accounts are reported on by a commissioner; but there are many exceptions to that report undecided. So far, those accounts are unsettled. Those accounts appear to me to be both intricate and involved in difficulty, and I cannot estimate the result probably by many thousand dollars.

Question by same. Have you not been for some years, also, the counsel of the complainants, McCall and wife, and Thomas King, in a suit brought by them against Col. White, for the purpose of being let into possession of their interests at Saltville, and for the purpose of compelling Col. White to account for their portion of the profits of King's works?

Answer. Yes.

Question by same. Has not a great deal of testimony been taken by the complainants, for the purpose of showing what these profits were? Did or did not the complainants require Col. White to produce his books, showing the business at the saltworks, before the commissioner? and what was his answer to that demand?

Answer. There has been a great deal of testimony taken on that point. The complainants did require the production of the books at Saltville, before the commissioner, which was resisted by the counsel of Col. White; and I believe the court made no order on that subject.

Question by same. After all the attention which you have given to this cause, have you been able to make up any certain estimate of the annual amount of these profits?

Answer. I have not.

Question by same. From your acquaintance of the character and intelligence of William King, and his fitness for business, was he or was he not a fair match for Col. White, in making a bargain, when he came of age?

Answer. William King is a young man of indolent habits, apparently careless of his interests, and not very well informed of his interests and rights. Col. White is a highly intelligent, active, enterprising man, who, by his industry and enterprise, acquired a large fortune from very humble circumstances with which he began life. So far as my opinion is asked, I should suppose Mr. King no fair match in making a bargain with a shrewd, intelligent man, of great capacity for business and the acquisition of wealth, such as Col. White.

Question by defendant. Do you believe that if it was not for such qualifications as you have stated me to possess, that this suit would now be depending?

Answer. One former Chancellor, I believe, decided that the devise in William King's will to the plaintiff was too remote and contingent to take effect, therefore void after Col. White's contract with plaintiff. Suit was brought by Col. White in the Federal Court, principally, if not entirely, for the purpose of trying that decision. The Federal Court decided that case in favor of the devise to the plaintiff, upon an ejectment, which that suit was; but the court say, in delivering their opinion, that they do not mean to decide the main question, which, they say, can only be properly decided in equity. The plaintiff, I know, has great hopes that the final decision will be for him; and says he is so advised by his counsel, Daniel Webster, Esq. The counsel for the plaintiff here, think that the contract with Col. White was a bad one for him, independent of the devise in William King's will. From plaintiff's indolent habits, I doubt whether he would ever have brought the suit in the Federal Court; but whether he would have brought this suit, I cannot determine.

92.

Question by same. Was there not strong expectations of further salt establishments in the neighborhood in 1823 and 1824?

Answer. I believe, about those years, that Thomas Jackson and Joseph Bell, and perhaps others, formed a company to dig or bore for salt on the lands of Captain Smith, within probably half a mile of King's well, in the same valley. Jackson was a man of capital, and, I understood, bored in one place upwards of 700 feet, without success. Another company was formed of men of capital, to explore for salt the lands of Capt. Campbell, in the rich valley, about 7 miles above Saltville, who made considerable experiments without success. I do not recollect that the explorers were much encouraged by appearances indicating salt, during the progress of their experiments; but expectation was, about that time, considerably excited with some, and strong hopes of success entertained by many, as well as I recollect. I believe, for the last thirty years experiments have been made at various times, in this and the adjoining country of East Tennessee, with little success. Salt has been found in various places in this country, but not in quantities sufficient to enable the owners profitably to compete with King's and Preston's works.

Question by complainant's counsel. Is or is it not supposed that Colonel White's estate has very much increased since he entered into the salt making business?

Answer. It is supposed to be nearly double.

And further this deponent saith not, being no further interrogated.

BENJAMIN ESTILL.

I, Peter J. Branch, a justice of the peace for the county of Washington, before whom, by consent of parties, this deposition has been taken, do certify that the foregoing deposition of Benjamin Estill has been duly taken, by virtue of the enclosed commission. Sworn to and subscribed before me alone, by consent of parties, at the office of J. H. Fulton, in the town of Abingdon, on this 21st day of August, 1830.

Given under my hand the day and year last aforesaid.

PETER J. BRANCH, *J. P.*

King, &c. versus King's representatives—record.

The following is a copy of the record in the case of Samuel King and John Allen and wife, versus the representatives of William King, deceased.

To the Honorable John Brown, chancellor of the western district of Virginia, humbly complaining, showeth unto your honor your orators Samuel King and John Allen and Hannah his wife, late Hannah King, that your orator Samuel, and your oratrix Hannah, are brother and sister, of the half blood to William King, late of Abingdon, Washington county, who, in the month of October, 1808, departed this life, having first duly made his last will and testament, bearing date the 3d day of March, 1806, and duly admitted to record, after his death, in the county court of Washington, a certified copy of which your orators and oratrix herewith exhibit, and pray to be taken as part of this bill. Your orators and oratrix further show, that the said William, before his death, was possessed of a very large estate in land and other real property, as well in this commonwealth as in the States of Kentucky, Tennessee, and Mississippi Territory, and elsewhere. He possesses, also, a very large personal estate, independent of a capital of several millions of dollars employed in commerce generally, in the hands of per-

sons who were in partnership with him in Virginia, Tennessee, Mississippi Territory, Alabama Territory, and perhaps other places. After his death probate was granted to William Trigg and James King, the executors of the said will named, and they took possession of, and exercised ownership over, all the property, real and personal, belonging to said estate, and continued the partnerships with most of the partners of their testator, as well as engaged in commerce themselves, and forming new connexions. Your orators and oratrix expressly charge, that the said Trigg and King never took any regular account of the personal property of their testator, after his death, nor were the parties directed, or did they render any account of stock and money in hand, debts due to and from them; but the whole concern was continued as if the death of William King had not happened. There was also on hand, a very large quantity of salt, manufactured at the saltworks of the testator, amounting to many thousand bushels, of which no account was rendered; nor was it sold in the manner the law directs; but the said executors disposed of it for their own private use. Of the very large property which the testator had, a very few articles was appraised and sold as directed by law. Your orators further state, that the said William King was considerably indebted on account of his mercantile connexions, that is to say, for goods purchased or for articles which answered for remittances, for the payment of which very little if any provision has been made, notwithstanding the executors have had at their command the whole of the immense estate and capital left by their testator. Many of these debts were payable in the products of the country, in which the connexions of the testator resided. The said executors have converted some of the stores where the proceeds of the country were formerly received in payment, into cash stores, thereby disabling themselves from paying the debts in produce; and with the express intent, as your orators and oratrix charge, that the debts of the testator may be levied on the visible estate; and that they may be enabled to keep the money which they receive, and convert to their own private purposes. The consequence would be, that, in the present scarcity of money in those places where lands are subject to the payment of debts, the most extravagant sacrifices would be made; and, indeed, the personal property must also be sold for much less than its real value, if creditors should proceed to employ legal means to enforce payment, which is very probable, as your orators and oratrix have heard that there is great dissatisfaction among them, on account of the manner in which the estate has been hitherto managed, and the delay of payment; and some have threatened to commence or actually have commenced suits. Your orators and oratrix further state, that Mary King, widow of the testator, has relinquished, by her declaration made in the county court of Washington, all benefits arising under the will aforesaid, and claims her right of dower in the real estate and slaves, and one half of the surplus of the personal property, (the testator having no children at his death.) Your orators and oratrix further beg leave to represent, that, although the said executors took possession and proceeded to the use of all the property, yet that it is not ascertained whether they have proceeded on the conditions mentioned in the will or not. Your orators and oratrix have, at times, heard that they refused to enjoy the benefits intended by the testator as devisees and legatees, and pay the legacies mentioned in the said will for the enjoyment of those benefits; but that they intended to hold the property as executors, and in this latter character they have, as your orators and oratrix are informed, proceeded to dispose of some of the real estate,

93.

and converted the proceeds to their own purposes; which conduct is highly illegal, and calculated to embarrass the rights of those interested. Your orators and oratrix further represent, that, since the commencement of this suit, the said James King departed this life, having, as your orators and oratrix are informed, duly made his last will and testament, a copy of which, when procured, is prayed to be taken and considered as part of this bill; in consequence of which the whole authority relating to the management of the estate of the said William King has now been assumed, and is exercised by the said William Trigg. Your orators and oratrix are advised that, according to the legal construction of the will of William King, they are entitled to a portion of his estate, independent of the legacies arising out of the following propositions:

1. That the debts having been contracted to create the mercantile capital, that stock or capital out to be applied to their payment.

2. That William Trigg and James King have only an estate, *during the life of Mary King*, in the profits of the saltworks and mercantile stock or capital, at the end of which the legal representatives of William King are entitled to distribution, allowing a discount for all debts paid.

3. That if any thing has happened or shall happen, which shall prevent the saltworks and mercantile business from being carried on *according to the intention of the testator*, that an immediate sale of all the personal estate, collection of all the debts, and payment of those due from the estate, and a distribution of the surplus among the legal representatives of William King, ought to be directed.

4. That as the personal estate, contradistinguished from the *mercantile stock or capital*, the testator has died wholly intestate, and that distribution thereof ought to be immediately made, pursuant to law in cases of intestacy.

5. That during the life of Mary King, the legal representatives of William King are entitled to enjoy all the real estate, except the saltworks and her dower. That the legal representatives of William King are entitled to the *inheritance* of the real estate, because, first, the devise to William King, son of James, "in trust" for the oldest son or issue of the marriage therein mentioned, is too remote and *uncertain;* and second, because the devise to "any" child of William Trigg and Rachel his wife, "who shall marry" as directed, is too remote, and tending to establish a perpetuacy against the policy of the law.

Your orators and oratrix further state, that the security which the said William Trigg and James King gave, as executors, is wholly incompetent, not only because the penalty of the bond is for a sum far short of the actual amount which will come into their hands; but because the persons who are bound do not possess estates, after the payment of their debts, to one half of the amount of the penalty.

Your orators and oratrix took an exception to the course pursued by the county court, in this respect; but as in this honorable court relief could only be had as to the *merits* and principal questions, they decline proceeding to have the error corrected in a court of law, being advised that *here*, where substantial justice could only be done, the means to effect it would not be shackled or restrained by the proceedings of the county court. Your orators and oratrix further show, that the said William King, at his death, left in his legal representatives a brother of the full blood named James, and before mentioned; sister named Nancy, intermarried with Connally Findlay;

and Polly Mitchell, Rachel Mitchell, Betsy Mitchell, John Mitchell, children of the testator's sister Elizabeth, who intermarried with John Mitchell, but departed this life before the said William King; the two first of whom are entitled to one share each, and the last one to one share in the whole, and your orator Samuel, and oratrix Hannah, who are entitled, by law, to one half share each of all the property which the said William owned at his death, *not legally disposed of otherwise.* To the end therefore, that William Trigg, the executor of James King, Rachel Trigg, Connally Findlay, and Nancy his wife, Peggy Findlay, Nancy Findlay, Polly Findlay, Betsy Findlay, Sally Findlay, Alexander Findlay, Thomas Findlay, John Mitchell, Betsy Mitchell, Polly Mitchell, Rachel Mitchell, John Mitchell, Nancy King, (widow) William R. Trigg, and Daniel Trigg, children of William Trigg and Rachel his wife, William King, Thomas King, and Nancy King, children of James King, may be made defendants hereto, and that they may be compelled to answer the premises, and that this honorable court may such order or orders, and decree in the premises, as to justice appertains, and may be adapted to their case. That the said executor and all others may be restrained from meddling with the real estate, that competent and proper security may be required and distribution made, and every other relief afforded, that they may be entitled to, may it please your honor to grant to your orators and oratrix the commonwealth's writ or writs of subpœna, directed, &c. &c.

Meditating on the uncertainty of human life, I, William King, have thought proper to make and ordain this to be my last will and testament, leaving and bequeathing my worldly estate in manner following, to wit:

To my beloved wife Mary, in addition to her legal dower of all my estate, the dwelling-house and other buildings on lot number ten in Abingdon, where I now reside, together with the garden, orchard, and that part of my Fruit Hill plantation south of the great road, and lands adjacent to Abingdon, now rented to C. Findlay & Co., and at my father's decease those in his occupancy on the north side of the great road, for her natural life.

I also will and declare, that, in case my beloved wife Mary hath hereafter a child or children by me, that the said child or children is and are to be sole heirs of my whole estate, real and personal, excepting one-third part of specified legacies and appropriations herein after mentioned, which, in case of my having children, will reduce each legacy herein after mentioned to one-third part of the amount hereafter specified, and the disposition of the real estate, as hereafter mentioned, in that case wholly void.

In case of having no children, I then leave and bequeath all my real estate, at the death of my wife, to William King, son of my brother James King, on condition of his marrying a daughter of William Trigg, and my niece Rachel, his wife, lately Rachel Findlay, in trust for the eldest son or issue of said marriage. And in case such marriage should not take place, I leave and bequeath said estate to any child, giving preference to age, of said William and Rachel Trigg, that will marry a child of my brother James King, or of sister Elizabeth, wife to John Mitchell, and to their issue; and during the lifetime of my wife it is my intention and request that William Trigg, James King, and her, do carry on my business in copartnership, both saltworks and merchandising, each equal shares; and that, in consideration of the use of my capital, they pay out of the same the following legacies:

To John Mitchell, on condition of his assisting and carrying on business *there,* at the annual salary as formerly, viz: one thousand dollars per year

94.

from two to five years, as they may wish his assistance; an additional sum of ten thousand dollars, payable five years after my decease; and to each of his children, upon coming of age, one thousand dollars more than the general legacy hereafter mentioned.

To Connally Findlay a like sum of ten thousand dollars, payable in five years. To my nieces Elizabeth Findlay and Elizabeth C. Barney, called for my grandmother, with whom I was brought up, ten thousand dollars in twelve months after marriage, provided they are then eighteen years of age; if not, at the age of eighteen; to each of my other nephews and nieces at the age of eighteen, that is, children of my brother James, sisters Nancy and Elizabeth, one thousand dollars each; to each of the children of my half brother Samuel and half sister Hannah, in two years after my decease, one thousand dollars; and to my said half brother Samuel, in case of personal application to the manager at Saltville, or to my executors in Abingdon, on the first day of January, annually, during his life, one hundred and fifty dollars; if not called for on said day, to be void for that year, and receipt to be personally given.

It is my will and request that my wife, William Trigg, and James King, or any one of them that shall concur in carrying on the business, should either join with the young men that may reside with me and be assisting me on my decease, that are worthy, or furnish them with four or five thousand dollars worth of goods at a reasonable advance, on a credit of from three to five years, taking bonds with interest from one year after the supply.

In case my brother James should prefer continuing partnership with Charles S. Carson, in place of closing the business of King, Carson & King as soon as legal and convenient, then my will is that William Trigg and my wife carry on the business, one-third of each for their own account, and the remaining third to be equally divided between the children of my brother James, and sisters Nancy and Elizabeth.

To my father, Thomas King, I leave, during his life, the house he now resides in and occupies at Fruit Hill, together with that part of my land in said tract north of the great road that he chooses to farm, with what fruit he may want from the orchard; the spring house being intended for a wash house, with the appurtenances, subject to the direction of my beloved wife Mary, as also the orchard, except as aforesaid. I also leave and bequeath to my father the sum of two hundred dollars per annum during his life; and if accidentally fire should destroy his Fincastle house and buildings, a further sum of two hundred and twenty dollars per annum, while his income from there would cease.

I also leave and bequeath to the Abingdon Academy the sum of ten thousand dollars, payable to the trustees in the year one thousand eight hundred and sixteen, or lands to that amount, to be vested in said Academy, with the interest or rents thereon, for ever. Abingdon, Virginia, 3d March, 1806.

WILLIAM KING.

Teste, WILLIAM D. NELSON,
JOHN DOUGHERTY.

Signed and acknowledged by William King, as his last will and testament. Abingdon, 3d March, 1806. (six.)

WILLIAM KING, [L. S.]

Teste, WILLIAM D. NELSON,
JOHN DOUGHERTY.

In testimony whereof, I hereunto affix my hand and seal. Abingdon, 3d March, 1806.

WILLIAM KING, [L. S.]

Teste, JOHN DOUGHERTY,
WM. D. NELSON.

The answer of William Trigg, executor of William King, deceased, to the bill of complaint exhibited against him and others, in the Staunton chancery court, by Samuel King, John Allen, and Hannah his wife.

This respondent, saving to himself all proper exceptions to the plaintiffs' bill, for answer thereto, saith:

He admits it to be true, that the plaintiffs Samuel and Hannah are the brother and sister of the half-blood to his testator, William King, deceased. He also admits it to be true, that the said William King died about the 13th of October, in the year 1808—leaving the representatives mentioned in the bill—possessed of a very large real and personal estate, and having duly made his last will and testament, to a copy of which this respondent refers as part of this answer. This will has been duly proven and recorded, and probate thereof granted to this respondent and James King, who gave security as the law requires.

This respondent denies that the security given by the executors is insufficient. He believes it to be abundantly ample. The amount of the personal estate this respondent conceives to be by no means as great as set forth by the plaintiffs, and among the securities and those who are principally interested in that estate. This respondent begs leave to exhibit as part of this answer two papers, marked A and B, as containing the most correct view he can now furnish of the amount of the testator's personal estate, exclusive of his negroes. The paper marked A contains a statement from nearly all the different mercantile firms in which the testator was concerned, of the state of those funds at the time of his death; from some few residing at very, inconvenient distances no statements have been obtained. The paper B contains an abstract from the paper A, together with a view of other personal estate, debts and credits. From this it appears that the whole amount of the personal estate comprised within that view, including credits, good and bad, is $978,359 85¾; from which is to be deducted for debts due from the testator $521,249 98, leaving $457,109 87¾. To this sum is to be added the amount of property in the funds not heard from, and the value of the slaves. For a list of these slaves this respondent begs leave to refer to an exhibit in the cause of King's widow *vs.* King's representatives, depending in your court, a copy of which is exhibited as part of this answer, marked C, and from the above is to be deducted the amount of bad debts. This, it is believed, is very considerable. This respondent does not pretend to vouch for the accuracy of the above statements, but he believes them to present a tolerably correct general view of the personal estate of his testator. And he believes that this view of the subject, when the relation of the securities to the estate and their property is taken into consideration, will clearly shew that there is no good cause to complain of insufficiency in the security which the executors have given. But this respondent denies that the plaintiffs have any right to be heard on this subject; for, as to the legacies left them in the will, they do not pretend to be in danger of losing them; and as to the residue of the estate, this respondent conceives that they have no interest in it. One fact, however, ought not to be omitted in

this part of the answer. It is, that Mrs. King, the widow of the testator, who, having relinquished her claim under the will, is herself entitled to one-half of the personal property, does not require any security from the executors, and she wrote a note to the court to this effect before the security was given.

This respondent admits that he and the other executor, James King, took possession of the personal estate of their testator; but in their character of executors—to be managed and disposed of according to the will. They also took possession of such of the real estate as they had no doubt under the will they ought to take possession of, and they had a care over the whole, so far as it fell within their power and observation. But this respondent and his co-executor were somewhat at a loss to know, from the will, the real extent of their power and duties in regard to the real estate. This respondent hopes to have the direction of this honorable court upon that subject. He is very willing at all times to render a fair and full account of all his transactions respecting every part of his testator's estate.

It is true, that, under the power given by the will of the testator, this respondent and the executor did continue the mercantile business. They generally continued the old firms, because they thought it their duty not to violate the contracts of their testator, and because they conceived that it would not be necessary to dispose of the capital in order to pay the debts. One partnership has been dissolved by limitation, and two others because it was discovered that they were doing a losing business. Only one new partnership has been formed, and that for the purpose of selling some goods which the executors had been compelled to receive on the dissolution of another partnership. This business they conceived to be profitable. This respondent denies that *trade* stores have been converted into *cash stores*, as stated in the bill. It is true that some old goods were sent from the store in Abingdon, to Cumberland, to be sold for money, for the express purpose of expediting the payment of debts. This was thought necessary; for the staple commodities of the western country would not be received in the seaports in payment of debts.

This respondent admits that the salt on hand at the saltworks was not sold at public auction. The executors did not think themselves bound to sell it in that way, and they deemed such a sale imprudent. The quantity was great, and it would probably have been sacrificed if sold in that way. Most of it is probably now retailed at the usual price, and the proceeds, so far as they have been received, appropriated to the payment of debts. But this respondent denies the right of the plaintiffs at all to inquire into the manner in which the executors have chosen to conduct the saltworks, and the mercantile capital of their testator. It is a subject in which the plaintiffs have no interest.

It is not true, as stated in the bill, that no account and inventories of the estate have been taken. An inventory and appraisement of the personal estate at Abingdon has been made and returned to court. Also an inventory and appraisement of the personal estate at Saltville; a copy of the latter is herewith exhibited, marked D, and a copy of the former will be exhibited. There was no schedule and appraisement of the salt on hand, or the merchandise. These were daily changing, and therefore a schedule and appraisement of them, as they were at the time of the testator's death, was impracticable. But after this respondent was advised that it was proper to have an estimate made of them, the most effectual means in the power of

the executors were taken to procure it. The same quantity of salt which was in the salt house at Saltville, at the testator's death, as nearly as could be ascertained, was again put into the house, and an account then kept of the quantity measured out. Means were immediately adopted to ascertain the situation of the several firms at the testator's death. A circular letter was addressed to all the houses, a copy of which is herewith exhibited, marked E. In consequence of this communication, the statements were furnished from which the paper A is made out. This respondent again repeats, that these statements cannot be relied upon as accurate. He does not wish them to govern the court, nor does he wish to be bound by them himself. The task of making correct statements of this sort, is one of great difficulty; and the results of them are frequently ideal. This respondent, however, is now taking measures for a complete settlement of the mercantile business, so as to ascertain the real amount.

This respondent does not admit that the creditors are dissatisfied with the proceedings of the executors. He does not believe that it is the case. Every exertion has been made to meet their claims, and debts have been actually paid to a very large amount, to wit, the amount of

It is true the creditors seem anxious to receive their moneys, but it is presumed that they make due allowances for the situation of the country, and the death of the testator. This respondent has not been informed that they are in any manner apprehensive for the safety of their debts.

This respondent and his co-executor took possession of the estate of their testator, claiming as executors and devisees under the will. They certainly meant to accept, and have accepted, the devise and bequest to them on the conditions in which they were given, and this respondent will be at all times willing to comply with those conditions.

When James King died he left a will, a copy of which is herewith exhibited, marked F. Under this will his executor, since his death, has conducted the mercantile concern of William King, deceased, in conjunction with this respondent.

This respondent does not admit the correctness of the several propositions under which the plaintiffs claim.

1st. He does not admit that the debts were contracted to create mercantile stock or capital, nor does he admit that, if that were the case, the mercantile capital ought to be applied to pay those debts. It is true that many of the debts, perhaps all of them except 40 or 50 thousand dollars, were created for this purpose; but some of them, it is believed, were created for other purposes.

But this respondent is advised that the undisposed of surplus, if any such there be, is the proper fund for the payment of debts, and that that fund must be exhausted before specific legacies can be touched.

2d. He does not admit that "*William Trigg and James King* have only an estate during the life of Mary King, in the profits of the saltworks and mercantile capital."

He is advised, and contends that they have a fee simple interest in the mercantile capital, and an absolute right to the profits of the saltworks, together with all the personal property appurtenant to them, after deducting the widow's interest therefrom. As to the mercantile capital, it may be said to consist of three different sorts of property. 1st. Personal property, properly and commonly so called, such as merchandise, credits, live stock, slaves, and utensils belonging to different farms. 2d. Of real estate per-

manently appropriated to the use of different firms, such as houses and lots, and perhaps farms. And, 3d. Of real estate not permanently appropriated as such to the use of the firms, but bought with partnership funds, taken to avoid losing a debt, or as a partnership speculation, and held as a part of the trading capital, intended to be sold for the partnership account, and the money by no means to be diverted from the mercantile trading capital. This respondent is advised that the first and last of these pass in fee simple, under the devise of mercantile capital; and the last will not pass devise of real estate, but may be sold and disposed of as the other trading stock. As to the second, this respondent is advised that it also passes under the devise of mercantile capital, at least for the life of Mrs. King.

3d. This respondent does not admit the third proposition. He is advised that the devise of the saltworks and the mercantile capital, being solely for the benefit of those to whom its management is committed, no one has any right to interfere with that management, especially the plaintiffs.

4th. This respondent does not admit that the testator has died wholly intestate as to any part of his personal estate. From the whole tenor of the will, it evidently appears that the testator meant to give his whole personal estate jointly to his wife and his two executors. But if he had not, the *personal* estate, as contradistinguished from the *mercantile* capital spoken of by the plaintiffs, would be otherwise appropriated. It is clear that the testator intended none of it for them; and it could be applied either to the payment of debts, or in satisfaction of the widow's claim, she having relinquished under the will, and being entitled to one half, instead of one-third of the personal estate, would encroach upon the bequest to the executors; and, therefore, if this property were neither included in that bequest nor subject to the payment of debts, it ought to be appropriated to the widow's claims, in exoneration of the legacy to the executors. This respondent is desirous to sell the slaves, but he is doubtful of the propriety, and wishes the direction of this court.

5th. It is not admitted that, during the life of the widow, the plaintiffs have any title to the real estate. This respondent believes that it was the intention of the testator to dispose of his whole estate, real and personal, and to leave no part for any length of time whatever undisposed of.

6th. The sixth proposition also is denied. This respondent is advised that the devises therein mentioned are good, and that they will be supported.

This respondent denies all fraud and combination, and prays to be dismissed with his costs.

AUGUSTA COUNTY, &c.

This day William Trigg made oath before me, a justice of the peace for said county, that the statements in the foregoing answer as of his own knowledge are true, and that those made from the information of others he believes to be true. Given under my hand this 26th of March, 1810.

JOHN WAYT.

The answer of William King, son of James King, being an infant under twenty-one years of age, by Charles S. Carson, his guardian, to a bill of complaint exhibited against him, and others, in the Staunton chancery court, by Samuel King, John Allen, and Hannah his wife.

This respondent, saving to himself all just exceptions to the complainants' bill, for answer thereto, saith:

He admits the statements in the said bill to be true, so far as they are admitted by the answer of William Trigg to it. He insists on the validity of the will of William King, deceased, so far as it relates to any right or interest given him under it, as devisee of the real estate.

He also insists on any benefit which may accrue to him as one of the legal representatives of the aforesaid William King, deceased. This respondent begs leave here to state, that a large part of the real estate of William King, deceased, lies in the State of Tennessee; that it is there liable to be sold for the taxes thereof, and he has been informed, other persons are acquiring rights thereto under the laws of that State; he therefore prays that a speedy decision may be had on that part of said William's will, that your respondent may know how far it is his duty to interfere with and take care of said real estate. This respondent does not know whether the statements in the aforesaid bill, other than those above admitted, are true or not; he, however, does not admit any of them to be true which conflicts with his rights, and having answered said bill as far as he is advised is material for him to answer, prays to be hence dismissed with his costs.

CHARLES S. CARSON,
Guardian of Wm. King.

WASHINGTON COUNTY, *to wit.*

Charles S. Carson made oath before me, John McClellan, a justice of the peace for said county, that the statements in the foregoing answer made in his own knowledge are true, and those made on the information of others he believes to be true. Given under my hand this 30th day of June, 1810.

JOHN McCLELLAN.

To the Honorable John Brown, Judge of the Superior Court, holden at Staunton.

The supplemental bill of the legal representatives of Samuel King, John Allen, and Hannah his wife, against the executors, devisees, and legal representatives of William King, respectfully represents:

That, since their original bill was exhibited before this honorable court, William Trigg, in the said bill mentioned, being executor and devisee of William King, departed this life, leaving Lilburn L. Henderson his executor, and Rachel his wife, and his four sons, none of which were born at the date of said King's will, his devisee never having had any daughter by his wife Rachel. The said Lilburn has since intermarried with the said Rachel, and has undertaken the execution of the will of the said William Trigg. Your orators and oratrix further state, that, at the time of filing their original bill they supposed that Nancy, the sister of the testator, who intermarried with Connally Findlay, was entitled to the inheritance of one-fourth of the testator's real estate in case of intestacy. But they have lately discovered that the said Connally and Nancy, who are natives of Ireland, from which they emigrated about the year 1796, at the death of the said William King were still aliens, in consequence of which your orator, John Allen, and Hannah his wife, are entitled to one-sixth of the real estate, and the representatives of Samuel King to one-sixth, should the court determine the devise insufficient to pass the title. Your orators and oratrix state that William Trigg, James King, and Mary, the widow of the testator, or any of them, did not carry on the mercantile business as in the said will directed, but soon after

the death of the testator the various partnerships were dissolved, so that now not one remains. In many instances the capital invested has come into the hands of the executors, or some one of them, as assets; in other cases means are now taking by the said Lilburn to possess himself of the remainder, to answer the ordinary purposes of assets; so that your orators and oratrix expressly charge that the whole object of the testator, in this respect, has failed, and that the surplus of all the personal property is subject to distribution, as if the testator had died intestate, so far as it is concerned.

Your orators and oratrix therefore pray, that the defendants may be compelled to answer the premises, and that your honor may make such decree as will be just, and that subpœna be directed, &c.

The answer of Lilburn L. Henderson, executor of William Trigg, deceased, and guardian *ad litem*, for the infant children of said William Trigg, to the supplemental bill of complaint exhibited against him, and others, in the Staunton chancery court, by the representatives of Samuel King and John Allen, and Hannah his wife.

This respondent admits that the said William Trigg departed this life on the 3d of August, 1813, having first made his last will and testament, a copy whereof is herewith exhibited as part of this answer. He admits that he has taken upon himself the execution of that will, and has intermarried with the widow. He admits that the said William Trigg left four sons, his only children, to wit: William, Daniel, Connally, and Lilburn, all of whom are infants, and none of whom were born at the date of William King's will, as this respondent believes, though two of them were born at the said King's death, perhaps three. He admits that the said William Trigg never had any daughter by his wife Rachel, but the said four sons are all children of the said William Trigg and Rachel, and, as this respondent is advised, will be entitled to the devise in the testator's will, as therein provided, on the contingency of marrying a daughter of either James King or of Elizabeth Mitchell. James King is dead and has left a daughter now alive. Elizabeth Mitchell is also dead, and has left three daughters now alive. One of them is married to a certain William Heiskill, of Lee county; the other two are single, being yet young, neither probably exceeding twelve years old. The aforesaid daughter of James King, and the said three daughters of Elizabeth Mitchell were all in being at the death of the said William King.

As the event on which the devise aforesaid depended, may yet happen, this respondent, as guardian for the infant children of said Trigg, prays that their interest therein may be protected, and the estate, with the profits thereof, may be preserved for their benefit.

This respondent admits that Nancy Findlay is an alien, and that Connally Findlay was an alien at the death of William King. He believes that the said Connally has been since naturalized. This respondent has also been informed and believes, that Samuel King, the executor of part of the plaintiffs, and the plaintiff Hannah, were both aliens. They were both born in Ireland, subjects of the King of Great Britain and Ireland, and this respondent cannot learn that they have ever become citizens of the United States. This respondent begs leave to state, that James King, the brother of the testator, William King, was born also a subject of the King of Great Britain and Ireland; and that this respondent cannot ascertain that the said James was ever naturalized within the United States. This respondent is advised

that, if the said Samuel King, Hannah Allen, and James King, were not citizens of the United States at the time of the death of the said William King, neither of them can inherit, as heirs of the said William King, any of his real estate of which he may have died intestate.

This respondent admits that all the mercantile firms which were carried on under the will of William King, except only that under which the saltworks are conducted, have been dissolved. It is not true, however, as stated in the supplemental bill, that the devisees, William Trigg, James King and Mary, nor any of them, ever carried on the mercantile business as in the said will is directed. On the contrary, the said James King and William Trigg (the widow having relinquished the devise to her) did accept the devise to them, and for a considerable time carry on the mercantile business in its full extent, as directed by the will. The firms, however, except as abovesaid, have been one after another dissolved; the last of them having continued till the year 1812: these firms were dissolved because it was found essentially necessary to dissolve them in order to raise funds to meet the debts pressing on the estate. The personal property had fallen much short of the estimate made of it in answer of William Trigg, filed in this cause. Instead of their being upwards of nine hundred thousand dollars of personal property, as estimated in that answer, thinks that there was not more than five hundred thousand dollars. This respondent, however, does not admit that the dissolution of these firms, for whatever cause, can have any influence on the plaintiffs' claims, or on the defendants' rights. He is advised that the devisees of the mercantile capital had a right, under the will of the testator, to use it as they pleased, provided they did not thereby violate the rights of creditors or legatees.

This respondent having answered all the material allegations in the plaintiffs' supplemental bill, prays to be dismissed with his costs.

AUGUSTA COUNTY, &c.

This day Lilburn L. Henderson made oath before me, a justice of the peace for said county, that the statements made in the foregoing answer he verily believes are all true.

Given under my hand this 5th day of December, 1815.

JOHN C. SOWERS.

A copy. Teste, WM. S. ESKRIDGE, *C. C.*

VIRGINIA, *to wit:—At a court of chancery holden at Staunton on Monday, July the 15th,* 1816.

Between Samuel King's heirs, and John Allen, and Hannah his wife, plaintiffs, and Lilburn L. Henderson, executor of William Trigg, deceased, and guardian ad litem to the infant heirs of said Trigg, and other heirs and representatives of William King, deceased, defendants.

This cause came on to be heard this sixteenth day of July, 1816, on the bill, supplemental bill, answers, exhibits, and depositions, and was argued by counsel: whereupon, for reasons contained in a written opinion filed among the papers in this cause, it is the opinion of the court—

1. That the testator, William King, made no disposition of his real estate (except the saltworks and appurtenances) during the life of his wife; and, consequently, that his heirs are entitled to the use and possession thereof during such time.

98.

2. That, under existing circumstances, as disclosed in the supplemental bill and answers, the inheritance to the testator's real estate does not pass by said will, but descends to those who are entitled thereto by law.

3. That the mercantile capital comprising the stock in trade at the time of the testator's death, and such real property, viz: houses, &c., as were used for carrying on the business, is absolutely bequeathed by the said will, subject, together with the saltworks, to the payment of legacies.

4. That the outstanding debts at the death of the testator, whether secured on lands or otherwise, except so far as necessary to make up the original mercantile capital stock, as well as the other personal property, belong to the estate; out of which, in the first instance, the testator's debts ought to be paid.

And this cause not being ready for a final hearing, it is ordered that the same be further prosecuted in, according to the principles of the foregoing opinion, to enable this court to make a final decree.

From which decree, the defendant, Lilburn L. Henderson, prayed an appeal to the court of appeals; which is granted him.

A copy. Teste, WM. L. ESKRIDGE, *C. C.*

Receiver's report—October, 1819.

The undersigned having been appointed receiver by the superior court of chancery, holden at Wythe court-house, by virtue of an order made at the last May term in a case between the sureties of William Trigg and James King, and the executors and devisees of William King, punctual to what he conceives his duty, called on Francis Smith, in whose hands the proceeds of the saltworks were enjoined, for such moneys as might be in his possession, being the proportion of the interest of the devisees of the said William Trigg and James King, of the money then actually on hand. The said Francis Smith paid the undersigned three thousand five hundred and forty-one dollars in notes on different banks in Tennessee and Huntsville, and a small part in notes on a bridge company in Georgia. The undersigned offered the proper proportion to several agents or attorneys of creditors, who refused, except Daniel Sheffey, who received six hundred dollars as attorney for Gordon and others, and Neil and Harley. The undersigned also retained his proportion, being a creditor. The balance of said amount is still in the possession of the undersigned, subject to such order as this honorable court shall make. The said Smith has since offered more of the same sort of paper, but the undersigned has declined receiving it without the order of this honorable court. He has also offered sundry obligations on persons who stand indebted to the saltworks, which were also declined. All of which is respectfully submitted.

JAMES WHITE.

Report—May, 1820.

The undersigned, appointed to receive the rents, issues, and profits of the saltworks, late the property of William King, so far as the interest of the representatives of William Trigg and James King is concerned, pursuant to the order of the honorable the chancery court, holden at Wythe court-house, respectfully submits to the court an account of his receipts and disbursements since his last report. The undersigned, on the 27th October, 1819, received from Francis Smith, Esq., sundry obligations for and on account of the profits of said saltworks, which had previously accrued, amounting to

$19,552 50, principal, and $1,633 84, interest, due that date. He has also received the sum of $2,699 50, in notes on various banks, and cash. The details of these receipts are stated in a paper exhibited as part of this report. The aggregate of these sums constitute the whole amount received. The amount of bank notes in the hands of the undersigned, as stated in his last report, he retained, except $492, notes not current, and applied towards the payment of a debt due him from the estate of William King; no other creditor being willing to receive them at par. He was advised he had a right so to do, particularly as he, as sheriff of Washington county, is now the representative of that estate, having it committed to him by the superior court of that county. The undersigned has delivered to Granville Henderson, Esq., as the attorney for John and Robert Gamble, and Cook and Wax, and Manasses Friel, obligations to the amount of $7,400, principal, and $514, interest, and paid him $1,810 in cash. He has also paid to General Francis Preston, a creditor, the sum of $4,530 50; and to D. Sheffey, as the attorney of Neil and Harley, creditors, the sum of $560. These are all the receipts and disbursements since the last report. All which is respectfully submitted.

JAMES WHITE.

May 25, 1820.

A copy. Teste, J. E. BROWN, *C. C.*

Report— October, 1820.

The undersigned, appointed by the honorable the superior court of chancery, holden at Wythe court-house, receiver of the profits of the saltworks, formerly the property of William King, has the honor to submit an account of his proceedings since the last term. The undersigned has received since that period, on account of the interest submitted to his care, the sum of thirty-six thousand one hundred and fifty-two dollars and sixty-nine cents in different paper on different banks; a detailed account of which is herewith exhibited. From the said statement it will be seen that a considerable portion of the money is in paper which the creditors residing towards the eastward will not receive. The undersigned has the whole not paid to creditors, ready to dispose of as this honorable court shall direct. Should it be left in his hands, he will adopt measures which he believes will enable him to have it converted into such money as the creditors will receive. The undersigned has paid Francis Smith for Alexander Smyth, under the order of the court, $2,000, in part compensation for taking the account directed. 2. He has paid $3,876 82, being the amount of an execution, with costs, issued from the circuit court of the United States for the Virginia district, at the suit of Alexander and James Fulton against the estate of William King. The reason why the undersigned paid the whole of this claim, was, that the creditors received a portion in Tennessee bank paper at par, and there being no doubt of the sufficiency of the fund for the ultimate payment of all the debts now known. In paying this execution, the undersigned saved five months' interest and the Marshal's commission. 3. To Granville Henderson, as attorney for Cook and Wax, and the administrators of Robert Gamble, $6,000 in a draft on Talbot Jones, Baltimore. 4. To Daniel Sheffey, attorney for Neil and Harley, creditors of said estate, in a like draft, $3,000. All which is respectfully submitted.

JAMES WHITE.

Report—May, 1821. 99.

The undersigned, appointed receiver by the honorable the superior court of chancery, to collect the rents, issues, and profits of the saltworks, so far as the interest of the representatives of James King and William Trigg extends, begs leave to submit to the said court a statement of the receipts and disbursements since the last report, made at the October term, 1820, viz:

Receipts.

A draft from Francis Smith, Esq., on Stephen S. Ewing of Huntsville, being on account of the debts due to the saltworks before the appointment of the undersigned, payable in Nashville bank notes, and so paid - - - - -	$3,400 00
Do do do do do do	1,000 00
Amount of receipts - - - - - -	4,400 00

Disbursements.

Paid William Galt - - - - - -	$496 00
Cook and Wax - - - - - -	2,626 00
John and Robert Gamble - - - -	7,878 00
Neil and Harley - - - - -	2,000 00
Thompson Atkins - - - - -	308 50
Granville Henderson, fees - - - -	40 00
Peter Mayo, for Treadway, Pollock, & Co. - -	150 00
James E. Brown for clerks fees - - - -	106 62
Francis Preston - - - - - -	5,000 00
	$18,605 12
Retained for Robert Gordon & Co. - - - -	$6,500 00

All of which is respectfully submitted.

JAMES WHITE.

Report—October, 1821.

The undersigned, appointed receiver by the honorable the superior court of chancery, holden at Wythe court-house, in the case wherein the sureties of James King and William Trigg are plaintiffs, and the devisees of William King, &c., are defendants, begs leave to report, that, since the last term, he has received on account of the fund committed to his superintendence, the sum of $1,340 65 from Francis Smith, on account of the outstanding debts due to the saltworks, in notes on the banks of Tennessee. The undersigned, being now the lessee of the saltworks, is liable for the rent, the sum of $20,000, and the interest, $300; these two last sums are payable in par money; of which amount, the undersigned has disbursed the following sums, viz:

To Granville Henderson, as attorney for John and Robert Gamble, $6,000, to the sum of $3,000 as attorney for Cook and Wax; these two sums were paid in a draft on Baltimore.

To Peter Mayo, as attorney for Pollock, Treadway, & Co., four thousand two hundred and fifty-four dollars.

To Thompson Atkins, a judgment creditor, $100.

To D. Sheffey, as attorney for Neil and Harley, twelve hundred fifty-six dollars and fifty-four cents. All these sums have been paid and are payable in par money. Retained for Gordon, Trokes, & Co., six thousand dollars, not yet paid.

When the undersigned reported at the last term, he stated that he had retained for Gordon, Trokes, & Co., $6,500; this sum he has since paid to them.

There are several other disbursements, composed of various small claims, the precise amount of which the undersigned cannot now ascertain. This will be hereafter reported.

All which is respectfully submitted.

JAMES WHITE.

A copy. Teste, J. E. BROWN, *C. C.*

Report—October, 1822.

To the Honorable John Brown, Judge of the superior court of chancery holden at Wythe court-house:

The undersigned, appointed receiver by this honorable court, in the case of White and others against King's heirs and others, begs leave to report the state of his transactions since the last report. The undersigned has received from Harold Smyth on account of a debt due to the saltworks from

J. Lyon - - - - - - -	$156 23
The undersigned is liable to the payment of one year's rent on the first day of September last - - - -	20,000 00
Interest on half that sum, six months - - - -	300 00

The undersigned has paid the six thousand dollars stated in his report of October, 1821, as being retained for Gordon, Trokes, & Co. The undersigned gave a draft to Granville Henderson, as attorney for Henry Wax, and John and Robert Gamble, a draft on Baltimore for - $12,205 64

To D. Sheffey, as attorney for Neil and Harley - - -	469 50
Paid Harold Smyth marshal's fees - - - -	104 81
Paid Benjamin Estill, as attorney for Gordon, Trokes, & Co. -	125 00
Delivered to Benjamin Estill a draft on Talbot Jones, being for the benefit of Gordon, Trokes, & Co. - - -	4,875 00
	17,779 95

All which is respectfully submitted.

JAMES WHITE.

October 25, 1822.

Report—May, 1823.

To the honorable John Brown, Judge of the superior court of chancery holden at Wythe court-house:

The undersigned, appointed receiver by this honorable court in the case of White, &c., against King's devisees and al., begs leave respectfully to report, that, since the last report, he received eighteen hundred dollars in Tennessee bank notes, which, at Huntsville, where it was received, was twenty-six per centum below par. This money was received from Stephen S. Ewing on account of a debt due to the saltworks before the appointment

of the undersigned, and which was heretofore reported, being on account of a note due from Henderson and Beaty to Francis Smith, as executor of James King.

All which is respectfully reported.

JAMES WHITE.

A copy. Teste, J. E. BROWN, *C. C.*

Report—October, 1823.

The undersigned, appointed receiver by the honorable the superior court of chancery holden at Wythe court-house in the case depending between the securities of James King and William and the executors and devisees of William King, begs leave to report, that, since his last report, he has received nothing on account of the fund committed to his superintendence, except that part of the rent of the saltworks which the devisees would be entitled to after the payment of debts; the whole rent being - $30,000 00
Two thirds whereof is - - - - - - - 20,000 00
Interest - - - - - - - - 300 00
Out of which the undersigned has paid Joseph , in pursuance of an order of this honorable court, last term - - - $2,000 00
He has retained for Gordon, Trokes, & Co. - - - 4,000 00
He paid Francis Preston, a creditor - - - - 4,000 00
He has drawn a draft in favor of Catharine Gamble *a see* of Gamble's adm. - - - - - - 7,000 00
Paid the marshal, H. Smyth, for execution, J. Newland versus King's executor, and sundry tickets - - - 217 81

All which is humbly submitted.

JAMES WHITE.

A copy. Teste, J. E. BROWN, *C. C.*

Report—May, 1824.

To the honorable John Brown, Judge of the superior court of chancery holden at Wythe court-house:

The report of the undersigned, receiver of the proceeds of the saltworks, &c , respectfully represents: That, since his last report, nothing belonging to the fund committed to his superintendence has come to his hands, except as hereafter mentioned. There have been placed into the hands of the undersigned, by Francis Smith, a number of obligations on persons residing in Tennessee and Alabama, amounting to $14,390 32, which are enumerated in a schedule herewith exhibited. Of this sum, the undersigned has collected four hundred and forty dollars in Tennessee money, and two hundred and thirty in money rated at par.

The undersigned has given an order to D. Sheffey, Esq., for the amount of a decree rendered on behalf of Echelberger & Co. against the estate of William King, which, with the costs, &c., amounts to $404 29.

All which is respectfully submitted.

JAMES WHITE.

Commissioner's report—May, 1822.

VIRGINIA—*At a superior court of chancery holden at Wythe court-house, for the district of Wythe, on Wednesday, October 24th*, 1821,

James White, Richard White, John Goodson, James King, William King, Peter Clark, Joseph Miller, Thomas Tate, Charles Tate, John McCul-

lock, Robert McCullock, John Buckanin, William McHenry, William Poston, Peter Scott, Earl B. Clapp, William Grey, Henry Dickerson, Samuel Vance, John P. Mathews, executor of John Trigg, deceased, Rufus Morgan, William D. Neilson, Bazel Talbot, Michael Shaver, William P. Thompson, and Gerard T. Conn, plaintiffs, *against* Lilburn L. Henderson, executor of William Trigg, who was executor of William King, deceased, Rachael Henderson, wife of the said Lilburn L. Henderson, the children of William Trigg, deceased, Thomas Claiborne, and Sarah, his wife, and the children of James King, deceased, and Francis Smith defendants.

On the motion of James King's children, by their guardian ad litem, it is ordered that master commissioner Mathews take an account, and exhibit a statement shewing the amount of debts yet due to the creditors of William King, deceased; also, what sums have gone into the hands of James White, as receiver under the order of this court, and how the same has been disposed of by him; and that he make report thereof to this court at the next term, together with any matter specially stated, thought pertinent by himself, or required by either of the parties so to be stated.

A copy. Teste, J. E. BROWN, *C. C.*

In pursuance of the above order, your commissioner has proceeded to ascertain the amount yet due to the creditors of William King, deceased, so far as the same could be ascertained from the records and exhibits in suits instituted by the creditors in this court vs. representatives of William King, deceased; to which he has added statements of balances and debts due to other creditors, for the recovery of which suits have not been instituted in this court, so far as the probable amounts could be ascertained by him; and also, an account of the sums received by James White, and how the same has been disposed of by him.

Statement of receipts by James White.

1819.				
June 19,	To receipt to Francis Smith - - -			$3,541 00
Oct. 27,	To receipt to same for sundry obligations—principal - - - -	$19,522 50		
	Interest due - - -	1,633 83		
			21,186 34	
	To receipt to same for cash - - -			2,699 50
1820.				
Sept. 1,	To receipt to same - - - -			22,140 63
"	To receipt to same - - - -			14,012 06
Nov. 27,	To receipt to same, (draft on Stephen Ewing) -			4,400 00
1821.				
Sept. 1,	To receipt to same - - - -			21,640 65
				$89,620 18

Statement of disbursements, &c., by same.

1820.		
Mar. 23,	To Granville Henderson, attorney for John and Robert Gamble, and Cook & Wax,	
	A note on Robert E. Cummings, D. & H. Campbell, balance of principal	$3,000 00

101.

	Interest on same, charged to Colonel White in his receipt to Francis Smith, Esq. - - -	313 54	
	A note, Robert R. Preston and Co. principal - - - -	3,000 00	
	Interest as above - - -	77 40	
	A note on Joseph Bell, principal -	1,000 00	
	Interest as above - - -	59 32	
	A note on Smith & Frior, principal -	400 00	
	Interest as above - - -	11 00	
	Cash - - - -	1,010 00	
			8,871 26
May 20,	To Francis Preston's receipt -	4,530 50	
	Deduct for error, this payment being made to Gen. Preston by delivering to him his note due 4th Nov. 1815, included in Col. White's receipt to Francis Smith, Esq. - -	203 50	
			4,327 00
1819.			
Aug. 9,	To Daniel Sheffey, Esq., attor. for Neil & Harley		600 00
Nov. 16,	To same for same - -		560 00
1820.			
May 20,	To Granville Henderson, Esq., attorney for Manasses Friel, and John & Robert Gamble -		800 00
Sept. 1,	To Francis Smith for Alexander Smyth - -		2,000 00
Oct. 22,	To Alexander Fulton, amount of an execution -		3,874 78
24,	To G. Henderson, attorney for John and Robert Gamble, and for Cook and Wax, draft on Talbot Jones, payable 90 days after sight -		6,000 00
25,	To D. Sheffey, Esq., attorney for Neil and Harley, draft on T. Jones, payable 90 days after sight - - - - - -		3,000 00
"	To Thompson Atkins, a creditor, paid October 16th, 1820 - - -	108 00	
	Paid October 23d, 1820 - -	200 00	
	Do. August 3d, 1821 - -	100 00	
			408 00
Nov. 24,	To Granville Henderson for counsel fees - -		40 00
"	To Peter Mayo, Esq., att'y for Treadway, Pollock and Co. - - - - -		150 00
1821.			
May 16,	To Francis Preston, a creditor - - -		5,000 00
24,	To D. Sheffey, Esq., att'y for Neil and Harley -		2,000 00
"	To G. Henderson, Esq., attorney. for Wm. Galt, for Cook & Wax, for John & Robert Gamble, three drafts of Talbot Jones, payable 120 days after date - - - - -		11,000 00
25,	To John G. Robert for Gordon, Trokes & Co., payable 4 months after date - - -		6,500 00
Oct. 26,	To G. Henderson, Esq., attorney for John & Robert Gamble, and for Cook & Wax, two drafts, dated October 26, 1821, payable 15th June, 1822 - - - - - -		9,000 00

Oct. 26,	To Peter Mayo, Esq., attorney for Pollock, Treadway & Co.		4,254 00
27,	To D. Sheffey, attorney for Neil & Harley		1,256 54
"	To James E. Brown for clerk's tickets		106 62
"	To James White's claim against estate, including interest to 25th May, 1820, retained by him out of the Tennessee money in his hands, as stated in his report of 25th May, 1820		2,846 13
"	To John P. Mathews, commissioner's ticket in Yeille & Co. vs. King's representatives		30 00
Obligations for money received by Col. White from Francis Smith, included in receipt of 27th October, 1819, *not collected.*			
	Henderson, Beaty & Trigg, pr. and int.	1,566 00	
	William Lyon do	289 50	
	H. D. Poston and B. McCarty do	522 66	
			2,378 16
Bank notes on hand, received by Col. White from Francis Smith, Esquire:			
Farmers and Mechanics Bank of Nashville		5 00	
Mechanics Bank of Cincinnatti		10 00	
Fayetteville Tennessee Bank		148 00	
Bridge Company of Augusta, left with Talbot Jones, Baltimore, to be sold		82 00	
			245 00
Discount on $292, notes on the Fayetteville Tennessee Bank, sold by Col. White at a loss of 50 per cent. as he states		146 00	
Discount on $135, notes on the Farmers and Mechanics Bank of Nashville, sold by Col. White at a loss of 40 per cent. as he states		54 00	
			200 00
			$75,447 49
Amount of receipts			89,620 18
Amount of disbursements			75,447 49
			$14,172 69

Balance in the hands of Col. James White $14,172 69 cents, exclusive of the obligations for money not collected and bank paper, as stated above.

It appears that about $20,768 of the money which was received by Col. White was in Tennessee paper; that Col. White paid a part to certain creditors, who agreed to receive Tennessee money at par, and retained a considerable claim which the said White had against the estate of William King out of the said money, leaving about $16,000, which the said White has used in the purchase of cotton in the State of Alabama on his own account. On this sum ($16,000) Col. White claims a discount of 20 per cent., which he states he considered was the fair value of the Tennessee Bank paper in relation to par money, at the time when the same was invested in cotton. This discount your commissioner considers as probably too much,

taking the years 1819, 20, and 21 together; during a part of this time it is believed Tennessee paper could have been converted into par money at a loss of about 10 per cent.; your commissioner thinks if it is considered that Col. White is entitled to a discount on Tennessee paper, about 15 per cent. would be a reasonable discount to be allowed him. The said White also claims a commission of 5 per cent. on the amount of receipts as a compensation for his trouble; should it be determined that he should be allowed any thing, your commissioner considers the amount claimed as very reasonable.

In addition to the amount paid out by Col. White of the money which has come into his hands as receiver, he procured a receipt of Littleton Henderson for $1,000, the amount of a legacy to his wife, late Mary Findlay, a daughter of Connally Findlay; this receipt is dated 11th March, 1822. The said White states, in his report to October term, 1821, that he has retained the sumof $6,000 for Gordon, Trokes & Co.; this money not having been paid over by Col. White, he could not have a credit for it.

In stating the preceding amounts your commissioner has not charged the receiver with interest, understanding that this subject, together with the question of the propriety of allowing the receiver a discount on Tennessee money and commissions for his personal trouble, would be submitted to the court for its opinion, and considering that on these questions being settled there would be no difficulty in settling the accounts.

A statement shewing the amount of debts due to the creditors of William King, deceased.

John and Robert Gamble, balance due 15th June, 1822, per statement filed	22,308 27
Henry Wax, surviving partner of Cook & Wax, balance due 15th June, 1822, per statement	1,969 72
George Yeille & Co., balance due 20th May, 1822, per statement	16,529 88
Neil & Harley, balance due 20th May, 1822, per statement	437 84
Francis Preston, balance due about , per account filed	14,000 00
Thompson Atkins, balance due, supposed	800 00
John McKim, (Baltimore,) balance according to statement of Col. White	14,000 00
Due	$70,045 71

Respectfully submitted.

JOHN P. MATHEWS, *M. C.*

A copy. Test,

J. E. BROWN, *C. C.*

VIRGINIA.—*In the superior court of chancery holden at Wythe court-house.*

JAMES WHITE and al. plaintiffs, against LILBURN L. HENDERSON and al. defendants.

In obedience to an order heretofore made in this cause, recommitting a report made by your commissioner for re-examination and adjustment, and another order made on the 28th day of May, 1827, directing your commissioner, in addition to the accounts heretofore stated by him in said report, to examine and state all subsequent transactions by the receiver relating to the fund committed to him, so far as the same is practicable, he pro-

ceeded, on the 6th day of September, 1827, to commence the execution of the said order; Col. White, the receiver, attending, who filed a notice with the acknowledgment of Mr. Peter J. Branch endorsed thereon; no person attended on behalf of the defendants.

Your commissioner begs leave to submit the following statement and report:

Statement shewing the amount of receipts and disbursements by Col. James White, as receiver of the proceeds of the saltworks, since commissioner's report of 24th May, 1820, including the balance due from the receiver according to said report.

RECEIPTS.

1826.	*Colonel James White, receiver, Dr.*	
March	To balance remaining in your hands, per commissioner's report of 24th May, 182 , (page 12,) up to 28th October, 1825 - - -	20,204 91
	To amount received from Rob't and Wm. Dickson	3,000 00
	To amount received from John Campbell. See report of receiver to October term, 1826 -	500 00
	To this amount from Francis Smith, being debts due Saltville, and paid over by said Smith to Alexander McCall and Peter J. Branch, by direction of Col. White. See his report to May term, 1827 - - - - -	14,446 00
		$38,150 91

DISBURSEMENTS IN PAYMENT OF DEBTS.

1826.	*Colonel James White, receiver, Cr.*	
Jan. 19,	By payment to Charles C. Johnson, Esq., attorney for Thompson Atkins, a creditor - -	70 00
Nov. 26,	By payment to Thompson Atkins - - -	30 00
1827.		
Jan. 19,	By payment to Charles C. Johnson, Esq., attorney for Thompson Atkins - - - -	230 00
16,	By counsel-fee paid Charles C. Johnson, Esq., for drawing answer as receiver ads. Balton Jackson	20 00
May 23,	By payment to Charles C. Johnston, Esq , attorney for Gen. Francis Preston, a creditor - -	4,000 00
25,	By payment to Edward Campbell, Esq., for fees as counsel - - - - -	100 00
26,	By payment to Benj Estill, Esq., fees as counsel	50 00
	By do. Henly Chapman, Esq., counsel fees	50 00
28,	By payment to Gen. A. Smyth, attorney for John McKim, jr., and others, in draft payable 31st October, 182 - - - - -	12,190 00
	By payment to Major D. Sheffey for advice and instructions to receiver in relation to the various duties connected with his appointment, examination of accounts, and drawing reports, from	

	May, 1819, to May, 1817. See Major Sheffey's account and affidavit - - - - -	500 00
	By allowance to receiver for expenses incurred in the discharge of the duties connected with his appointment, from May, 1819, to May, 1827, say 8 years, at $150 per annum. See affidavit of receiver, filed - - - - -	1,200 00
	By payment to Major D. Sheffey, attorney for Margaret Allen, on account of her legacy, including two years' interest - - - - -	336 00
Aug. 21,	By payment to Thomas C. King, on account of legacy and interest - - - - -	351 00
		$19,127 00
Amount of receipts - - - - - -		38,150 91
Amount of disbursements - - - - -		19,127 00
Balance - - - - - - - -		$19,023 91

The following statements are offered to shew the balances due at the end of each year, allowing the receiver a discount on the Tennessee Bank paper, and allowing him an annual sum for expenses and for counsel fees, and charging him with interest on the annual balances, and one-half year's interest on the sum of $10,000 each year for five years, being one-half of the rent of the saltworks for those years, and which was payable semi-annually.

1819. *James White, receiver, Dr.*

June 30,	To amount of receipt to Francis Smith, Esq. -			3,541 00
Oct. 27,	To amount of receipt to same for sundry obligations,			
	Principal - -	19,562 50		
	Interest - -	1,633 84		
			21,186 34	
	Deduct amount remaining uncollected of the above, at the date of commissioner's report of 23d May, 1822, principal and interest -	2,378 16		
	Deduct for uncurrent bank notes on hand at that date and for discount on bank paper - - -	445 00		
			2,823 16	
				18,363 18
	To amount of receipt to F. Smith, Esq., for cash -			2,699 50
				$24,603 68

1819. *Cr.*

Aug. 9,	By payment to D. Sheffey, Esq., attorney for Neil and Harley - - - - -	600 00
Nov. 16,	By payment to same for same - - -	560 00

1820.

Mar. 23,	By payment to G. Henderson, Esq., attorney for J. and R. Gamble, and for Cook & Wax, sundry obligations and cash. See commissioner's report of 23d May, 1822 - - -	8,871 26
May 20,	By payment to Gen. Francis Preston, creditor -	4,327 00
	By payment to G. Henderson, Esq., attorney for Manasses Friel, and for J. and R. Gamble -	800 00
	By amount of debt due to receiver, retained by him out of Tennessee money in his hands. See his report to May term, 1820 - - -	2,846 13
	By discount of 20 per cent. on $6,000 Tennessee money, part of $16,000 on which a discount is claimed by receiver. See commissioner's report of 23d May, 1822. The above sum of $6,000 believed to be about the amount received in Tennessee Bank paper previous to 1st June, 1820, after deducting amount retained by receiver and paid to creditors at par - - - -	1,200 00
	By this sum, being one eighth part of $500 00 paid to D. Sheffey for fees as counsel. See this report, page 3 - - - - -	52 50
	By allowance to receiver for expenses incurred in discharge of the duties connected with his appointment for one year - - -	150 00
	By balance in hands of receiver 1st June, 1820 -	5,186 79
		$24,603 68

1820. *James White, receiver, Dr.*

June 1,	To balance due from receiver 1st June, 1820 -	5,186 79
Sept. 1,	To receipt to F. Smith, Esq , 1st Sept. 1820 -	22,140 63
	To receipt to same, 1st September, 1820 - -	14,012 06
Nov. 27,	To receipt to same, draft on Stephen S. Ewing -	4,400 00
	To this sum, being 6 months' interest on $10,000, the amount due for rent on the 1*st March*, 1820, not receipted for till 1*st September*, 1820 -	300 00
		$46,039 48

1820. *Cr.*

Sept. 1,	By payment to F. Smith, Esq., for Gen. A. Smyth		2,000 00
Oct. 22,	By payment to Alexander Fulton, amount of an execution - - - - -		3,874 78
24,	By payment to G. Henderson, attorney for J. & R. Gamble, and for Cook and Wax, draft payable 90 days after September - - -		6,000 00
25,	By payment to D. Sheffey, Esq., attorney for Neil and Harley, payable 90 days after September -		3,000 00
	By payment to Thompson Atkins, a creditor—		
	Amount paid 16th October, 1820	108 00	
	Do. paid 23d October, 1820	200 00	
			308 00

Nov. 24,	By payment to Granville Henderson, Esq., counsel fees - - - - -	40 00
	By payment to Peter Mayo, Esq., attorney for Pollock, Treadway & Co. - - -	150 00
1821.		
May 16,	By payment to Gen. F. Preston, a creditor -	5,000 00
24,	By payment to D. Sheffey, Esquire, attorney for Neil & Harley - - - -	2,000 00
	By discount of 20 per cent. on $10,000 Tennessee money, being part of the sum of $16,000 on which a discount is claimed by the receiver. See this report, page 5, also commissioner's report of 23d May, 1822 - - - -	2,000 00
	By amount paid D. Sheffey, Esq. for fees as counsel. See this report, page 3 - - -	62 50
	By allowance to receiver for expenses this year -	150 00
	By balance in hands of receiver 1st June, 1821 -	21,454 20
		$46,039 48

1821. *Col. James White, receiver, Dr.*

June 1,	To balance due from receiver 1st June, 1821 -	21,454 20
Sept. 1,	To receipt to F. Smith, Esq., 1st Sept. 1821. This receipt includes $300 interest on half year's rent of saltworks for 6 months - -	21,640 65
		$43,094 85

1821. *Cr.*

Aug. 3,	By payment to Thompson Atkins, a creditor -	100 00
Sept. 24,	By payment to G. Henderson, Esq., attorney for William Galt, for Cook & Wax, and for J. & R. Gamble, three drafts, dated 24th May, 1821, and payable 1820 - - - -	11,000 00
25,	By payment to John G. Roberts for Gordon, Trokes and Co., draft dated 25th May, 1821, and payable 4 months after date - - -	6,500 00
Oct. 26,	By payment to Peter Mayo, Esq., attorney for Pollock, Treadway & Co. - - -	4,254 00
27,	By payment to D. Sheffey, Esq., attorney for Neil and Harley - - - - -	1,256 54
	By payment to James E. Brown, clerk's fees -	106 62
	By payment to John P. Mathews, commissioner's ticket in suit Yeille & Co., vs. King's representatives - - - - -	30 00
1822.		
Mar. 11,	By payment to Littleton Henderson, on account of legacy to his wife, late Mary Findlay. See commissioner's report of 23d May, 1822 - -	1,000 00
	By amount paid D. Sheffey, Esq., for fees as counsel. See this report, page 3 - - -	62 50
	By allowance to receiver for expenses this year -	150 00

By balance in the hands of receiver on the 1st June, 1822 - - - - - - 18,635 19

$43,094 85

1822. *Col. James White, receiver, Dr.*

June 1, To balance due from receiver 1st June, 1822 - 18,635 19

Sept. 1, To amount of receipt to F. Smith, Esq., 1st Sept. 1822. This receipt includes $300, being six months' interest on $10,000 rent of saltworks for half year - - - - - 20,300 00

Oct. To amount received from H. Smyth on account of debts due from Jacob Lyon. See receiver's report to May term, 1822 - - - 156 23

1823.

May, To amount received from Stephen S. Ewing on account of debts due from Henderson & Beaty, supposed to be debt on Henderson, Beaty and Trigg, included in Col. White's report of 27th October, 1819 - - 1,800 00

Col. White states that this was received in Tennessee money, which was at a discount of 26 per cent - - 468 00

1,332 00

$40,423 42

1822. *Cr.*

June 15, By payment to G. Henderson, Esq., attorney for J. & R. Gamble, and for Cook & Wax, two drafts, dated 26th October, 1821, payable 15th June, 1822 - - - - - 9,000 00

Sept. 8, By payment to Francis Smith, Esq., on acconnt of Gordon, Trokes & Co., draft dated 3d June, 1822, payable 90 days after September - 2,500 00

Oct. 14, By payment to Gordon, Trokes & Co., draft dated 9th July, 1822, payable 90 days after Sept. - 3,470 00

25, By payment to D. Sheffey, Esq., attorney for Neil and Harley - - - - - 469 50

By sundry tickets paid H. Smyth, marshal - 104 81

By payment to B. Estill, Esq., attorney for Gordon, Trokes & Co. - - - - 125 00

By amount paid D. Sheffey, Esq., as counsel - 62 50

By this sum allowed for expenses of receiver one year - - - - - - 150 00

By balance in hands of receiver 1st June, 1823 - 24,541 61

$40,423 42

1823. *Col. James White, receiver, Dr.*

June 1, To balance due from receiver 1st June, 1823 - 24,541 61

105.

Sept.	1,	To receipt to Francis Smith, Esq., 1st Sept. 1823. This receipt includes $300, being 6 months' interest on $10,000, rent of saltworks for half year		20,300 00
1824.				
May.		By amount received on account of notes put into hands of receiver by Francis Smith, Esq., as per receipt of 3d November, 1823. See receiver's report to May, 1824:		
		Par money - -	230 00	
		Tennessee money -	440 00	
			670 00	
		On the Tennessee money above the receiver claims a discount of 26 per cent. - - -	114 40	
				555 60
				$45,397 21

1823.		*Cr.*	
June	15,	By payment to Granville Henderson, Esq., attorney for Henry Wax, draft dated 25th October, 1822, payable 15th June, 1823 - - -	2,205 64
July	1,	By payment to G. Henderson, Esq., attorney for J. and R. Gamble, draft dated 25th October, 1822, and payable 1st July, 1823 - - -	10,000 00
	15,	By payment to Benjamin Estill, Esq., attorney for Gordon, Trokes & Co., draft dated 25th October, 1822, and payable 15th July, 1823 -	4,875 00
Oct.	17,	By payment to J. C. Trigg on account of legacy -	2,000 00
	23,	By payment to C. C. Johnson, Esq., attorney for General Francis Preston - - -	4,000 00
		By payment to H. Smyth, marshal, account of execution, Newland vs. King's representatives, and sundry tickets - - - - -	217 81
1824.			
May	27,	By payment to D. Sheffey, Esq., attorney for Echelberger & Co., amount of decree - -	383 85
		By annual allowance for services of D. Sheffey, Esq., as counsel - - - -	62 50
		By annual allowance for expenses of receiver -	150 00
		By balance due from receiver on the 1st June, 1824	21,502 41
			$45,397 21

1824.		*Col. James White, receiver, Dr.*	
June	1,	To balance due from receiver 1st June, 1824 -	21,502 41
Sept.	1,	To amount of receipt to F. Smith, Esq., 1st September, 1824 - - - - -	20,000 00
		To this sum, being 6 months' interest on $10,000, amount due for rent on the 1st March, 1820, not receipted for till 1st September, 1824 - -	300 00
			$41,802 41

1824. *Cr.*

July 15,	By payment to Gen. Alexander Smyth, attorney for J. & R. Gamble, draft dated 23d October, 1823, and payable 15th July, 1824 - - -	7,000 00
June 23,	By payment to Benjamin Estill, attorney for Gordon, Trokes & Co. - - - -	92 51
Aug. 8,	By payment to Francis Smith, Esq., on account of debt due Gordon, Trokes & Co., draft dated 2d June, 1824, and payable 60 days after Sept. -	327 49
31,	By payment to Benjamin Estill, Esq., attorney for Gordon, Trokes & Co., draft dated 23d June, 1824, and payable 60 days after September -	3,580 00
	By allowance for services of D. Sheffey, Esq., as counsel - - - - - -	62 50
	By annual allowance to receiver for expenses -	150 00
	By balance in hands of receiver on the 1st of June, 1825 - - - - - -	30,589 91
		$41,802 41

1825. *Col. James White, receiver, Dr.*

June 1,	To balance due from receiver 1st June, 1825 -	30,589 91
	To amount received on account of obligations put into receiver's hands by Francis Smith, Esq., 3d November, 1823. See report of receiver to October term, 1825 - - - - -	4,500 00
	To this sum collected, being the amount of debts due from H. D. Poston and B. McCarty, included in receipt of 27th October, 1819, for which a credit was given in commissioner's report of 23d May, 1822, as being then uncollected -	522 66
1826.		
March,	To amount received from Robert & Wm. Dickson	3,000 00
	To amount received from John Campbell. See report of receiver to October term, 1826 -	500 00
		$39,112 57

1825. *Cr.*

Mar. 4,	By payment to Thompson Atkins, a creditor -	100 00
June 13,	By payment to F. Smith on account of legacy due Joseph C. Trigg, per decree - - -	600 00
Sept. 1,	By payment to Gen. A. Smyth, attorney for J. & R. Gamble, draft dated 1st July, 1825, and payable 1st September, 1825 - - -	8,090 50
Oct. 22,	By payment to F. Smith, Esq., on account of legacy due Joseph C. Trigg, per decree - -	2,931 80
26,	By amount of officers' fees paid - - -	56 36
	By amount of commissioner's tickets, paid John P. Mathews - - - - -	36 00

	By payment to C. C. Johnston, Esq. attorney for Gen F. Preston - - - - -	6,000 00
28,	By payment to B. Estill, Esq., attorney for Gordon, Trokes & Co. - - - - -	2,800 00
	By amount of legacy paid Jos. Bullies and wife and Margery Allen - - - - -	817 56
	By annual allowance for services of D. Sheffey, Esq., as counsel - - - - -	62 50
	By annual allowance to receiver for expenses -	150 00
	By balance in hands of receiver 1st June, 1826 -	17,467 85
		$39,112 57

1826. *Col. James White, receiver, Dr.*

June 1,	To balance due from receiver 1st June, 1826 -	17,467 85
Oct. 16,	To this sum from Francis Smith, Esq., being debts due Saltville and paid over by said Smith to Alexander McCall and Peter J. Branch by direction of Col. White. See his report to May term, 1827 - - - - - -	14,446 00
		$39,913 85

1826. *Cr.*

Jan. 19,	By payment to C. C. Johnston, Esq., attorney for Thompson Atkins, a creditor - - -	70 00
Nov. 26,	By payment to Thompson Atkins - -	30 00
1827.		
Jan. 19,	By payment to Charles C. Johnston, Esq., attorney for Thompson Atkins - - - -	230 00
16,	By counsel fee paid Charles C. Johnston, Esq., for drawing answer as receiver ads. Bolton Jackson	20 00
May 23,	By payment to Charles C. Johnston, Esq., attorney for Gen. Francis Preston, a creditor - -	4,000 00
25,	By payment to Edward Campbell for counsel fees	50 00
26,	By payment to B. Estill, Esq., counsel fees -	50 00
	By payment to H. Chapman, Esq., counsel fees -	50 00
28,	By payment to General Alexander Smyth, attorney for John McKim, jr., and others, in drafts payable 31st October, 1827 12,190 00	
	Deduct interest on the above sum from 1st June, 1827, to 31st Oct. 1827, 5 months - - - - - 304 75.	
		11,785 25
	By payment to D. Sheffey, Esq., attorney for Margery Allen, on account of legacy and interest -	336 00
	By payment to Thomas C. King, son of on account of legacy, including interest from day of 18 to 1st June 1827 - -	351 00
June 1,	By annual allowance to D. Sheffey as counsel -	62 50

By annual allowance to receiver for expenses -	150 00
	$17,184 75
Balance in hands of receiver 1st June, 1827, exclusive of interest - - - -	14,729 10
To balance in hands of receiver 1st June, 1827 -	14,729 10
To one year's interest on $5,186 19, balance due 1st June, 1820 - - - -	311 20
To one year's interest on $21,454 20, balance due 1st June, 1821 - - - -	1,287 25
To one year's interest on $18,635 19, balance due 1st June, 1822 - - - -	1,118 11
To one year's interest on $24,541 61, balance due 1st June, 1823 - - - -	1,472 46
To one year's interest on $21,502 41, balance due 1st June, 1824 - - - -	1,290 14
To one year's interest on $30,589 91, balance due 1st June, 1825 - - - -	1,835 39
To one year's interest on $17,467 85, balance due 1st June, 1826 - - - -	1,048 07
Balance due from receiver on the 1st June, 1827, including interest on annual balances - -	$23,091 72

Col. White, the receiver, claims a further credit for the sum of $11,000, with interest from the day of , 1816, on account of the legacies bequeathed by William King to Elizabeth Mitchell, now Mrs. Heiskell, in consequence of a purchase made by the said White from a certain William P. Thompson, who had obtained a conveyance of said legacies by trust-deed from Lilburn L. Henderson, who claimed the benefit of the same by purchase from William Heiskell and wife, which will more fully appear by reference to the papers in a suit instituted by said White against William Heiskell in this honorable court; which suit has been compromised by the parties, as appears from an agreement between them filed. The representatives of James King and William Trigg object to the said claim being allowed, contending that the purchase under which the said White claims was made by the said Henderson, who was executor of William King, and paid for, so far as the same was paid for by him, with the funds belonging to the estate of William King. They also allege that the sum of $3,000 was paid by the executor of Charles S. Carson, who was executor of James King, deceased, in part of the legacies of William Heiskell and wife, for which the estate of the said Charles S. Carson, deceased, received a credit on the settlement of an account directed in a suit lately depending in this court, instituted by the infant children of the said James King, by their guardian, against the executors of Charles S. Carson, deceased; under these circumstances your commissioner deemed it correct to submit the question for the consideration of the court. If the claim of the said White should be allowed, the amount, including interest for eleven years, (to 1st June, 1827,) will be $18,200, to be deducted from the balance ascertained to be due from the receiver on the preceding page.

The representatives of James King and William King also object to the annual allowance made to the receiver for the services of Major Sheffey as counsel; your commissioner considering the charges reasonable has allowed them. They also object to the annual allowance made the receiver for expenses incurred in discharge of the various duties connected with his appointment, contending that it is the duty of the receiver to exhibit a detailed statement of such expenses; this, it appears by the affidavit of the receiver, filed, (and to which your *orator* begs leave to refer,) he is unable to do; from the facts stated in that affidavit, your commissioner is of opinion that the allowances made are reasonable.

They also object to the discounts allowed the receiver on Tennessee Bank paper. On this subject your commissioner would observe, that the affidavits and certificates filed go fully to sustain the claim of the receiver to the amount of discounts allowed, as he thinks.

They also allege that they are not bound to account for the full amount of the $14,446 charged to the receiver in the report, (page 12;) that the payment made them was in bonds and notes due from different persons, a part of which could not be collected, the obligors proving to be insolvent; and, further, that there was an error made in the calculation of the amount of those debts; that the time receipts were executed the correct amount being $14,037 75.

In this report the receiver has not been charged with any thing on account of the rents of the saltworks since the 1st September, 1824; he claims to hold possession of the said works by purchases and contracts made with those interested and having the power to contract.

Your commissioner begs leave to refer to the report made by the receiver, and filed the 27th of May, 1826, which contains a special statement of the condition of the property since the expiration of the lease to William and John Sanders, and how the same has been held by him since that time.

All which is respectfully submitted.

J. P. MATHEWS, *M. C.*
20th October, 1827.

The following is a copy of the papers in the case of White and others against Henderson and others, commonly called the Receiver Case, and being the case in which the foregoing reports of White, the receiver, and master commissioner Mathews, were made:

VIRGINIA.—*In the superior court of chancery, holden at Wythe court-house for the district of Wythe.*

Be it remembered, that, at a superior court of chancery aforesaid, holden Thursday, May 27th, 1819,

James White, Richard White, John Goodson, James King, William King, Peter Clark, Joseph Miller, Thomas Tate, Charles Tate, John McCullock, Robert McCullock, John Buchanan, William McHenry, William Poston, Peter Scott, Earl B. Clapp, William Gray, Henry Dickinson, Samuel Vance, John P. Matthews, executor of John Trigg, deceased, Rufus Morgan, William D. Neilson, Bazelle Talbot, Michael Shaver, William P. Thompson, Gerard T. Conn, plaintiffs, *against* Lilburn L. Henderson, executor of William Trigg, deceased, who was executor of William King, deceased, and Rachael Henderson, wife of the said Lilburn L. Henderson, William Trigg, Daniel Trigg, Connally Trigg, and

Lilburn Trigg, children of William Trigg, Thomas Claiborne and Sarah his wife, William King, Thomas King, and Rachael Mary Eliza King, children of James King, and Francis Smith, defendants.

On the motion of the plaintiffs, and for reasons set forth in their bill, which is filed, it is ordered, that an injunction be awarded them to restrain Francis Smith, his agents, and all other persons concerned, from paying away, but in the manner hereafter directed, or otherwise disposing of the issues and profits which have accrued and now paid over, or which may hereafter accrue, (necessary expenses excepted, and excepting also a draft drawn by Lilburn L. Henderson, executor of William King, in favor of the commissioner appointed to take the account of the administration of the estate of the said William King,) in the saltworks in the bill mentioned, so far as the interest devised by William King in his last will and testament to William Trigg and James King, is concerned. And it is further ordered, that the defendants, Lilburn L. Henderson, Thomas Claiborne, William Trigg, Daniel Trigg, Connally Trigg, and Lilburn Trigg, children of William Trigg, deceased, William King, Thomas King, and Rachael Mary Eliza King, their agents and guardians, be restrained from demanding or receiving any portion of such profits, on the plaintiffs entering into bond with sufficient security in the clerk's office of this court, in the penalty of one hundred thousand dollars, conditioned to pay all such damages as the defendants or either of them may sustain, and all costs which may be awarded against the plaintiffs. And it is further ordered, that James White be appointed receiver, who shall, on his giving bond with security, in the penalty of one hundred thousand dollars, in the clerk's office of this court, conditioned for the faithful discharge of his duty, have power and authority to demand and receive, from time to time, as they may be received from the said Francis Smith, or any other person who shall hereafter receive them, such issues and profits, and apply the same as equitable assets to the payment of the outstanding debts yet due from the testator, William King's estate, so far as they may come to his knowledge, and make report of his proceedings from time to time to this court. The said receiver, it being understood, agrees to act without commission on the money so received, or other compensation to be paid out of the estate of William King, or by the defendants; but the effect of this order is to terminate whenever the defendants shall make it appear that they have given or tendered to the plaintiffs satisfactory security to indemnify them against any injury they may sustain as the securities of William Trigg or James King, or make it otherwise appear that a continuance of this order is unnecessary. And it being suggested that the securities of Lilburn L. Henderson, the executor of William Trigg and William King, may be interested in this question, it is further ordered, they be made defendants to this bill.

The bill of the plaintiffs is as follows, viz:

To the honorable John Brown, Judge of the superior court of chancery holden at Wythe court-house:

Humbly complaining, sheweth unto your honor, your orators James White, Richard White, John Goodson, James King, William King, Peter Clark, Joseph Miller, Thomas Tate, Charles Tate, John McCullock, Robert McCullock, John Buchannan, William McHenry, William Poston, Peter Scott, Earl B. Clapp, William Gray, Henry Dickinson, Samuel Vance, John P. Matthews, executor of John Trigg, deceased, Rufus Mor-

gan, William D. Neilson, Bazell Talbot, Michael Shaver, William P. Thompson, and Gerard T. Conn, that, on or about the 13th day of October, in the year of Lord 1808, William King, of the town of Abingdon, departed this life, having first duly made his last will and testament, which, after his death, was admitted to record in the county court of Washington, and probate thereof granted to William Trigg and James King, two of the executors named. At the death of the testator, it was generally considered that he was very wealthy, that his means were ample to pay all his debts, and that those to whom his bounties were extended in his will would be rich beyond example. The county court of Washington required security nominally for the sum of one million five hundred thousand dollars for the faithful execution of the will; among others, your orator John P. Mathews, testator, and your other orators, except Peter Scott, became the security, the whole number being upwards of seventy. Your orators herewith exhibit a copy of the said will as a part of this bill. The widow of the testator having renounced the provision made in the will by her deceased husband, the said executors possessed themselves of all the property of the testator, and conceiving that they took an absolute estate in the whole personal estate, the furniture, servants, and other inconsiderable property excepted, no effectual means were taken by them to ascertain the real condition of the very complex and multifarious concerns committed to them; no measures were employed calculated to produce any practical effect to ascertain the real state of the various and very numerous mercantile establishments dispersed from Baltimore to New Orleans, in which the said William King was partner or proprietor; so far from closing these concerns, they were continued, and new speculations entered into by the said executors, in consequence of which it is believed very extensive losses have been incurred; at all events, there being no evidence of the actual condition in which the said estate came into their hands, appearances are against their administration. The *nominal* amount of the value of the estate appears perhaps much greater than reality would justify; there being no way to ascertain the real amount, the fallacious statements arising from estimates will have their influence, and shew that the said executors have wasted large portions of the said estate.

About the year 1809 the said James King departed this life, having first duly made his last will and testament, in which he appointed Charles S. Carson his executor; it was committed to record in the county court of Washington, and probate thereof granted to the said Carson; your orators refer to a copy of said will, and pray that the same may be taken and considered as a part of this bill. In consequence of the death of the said James King, the whole administration of the testator, William King's estate devolved on the said William Trigg, who continued to administer the same until the month of August, 1813, when he also departed this life, having first duly made his last will and testament, which was also admitted to record, and probate thereof granted to Lilburn L. Henderson, one of the executors therein named, to a copy of which your orators also refer as a part of this bill.

About the year 181 , the said Charles S. Carson also departed this life, having first duly made his last will and testament, which was duly recorded, and probate thereof granted to Francis Smith and Andrew Russell, two of the executors therein named, to a copy of which your orators also refer as a part of this bill. By this act the two last named became the executors

of James King, and they accordingly proceeded to the duties appertaining to their official character.

At the term of the superior court of Washington county, the said court vacated the power of the said Smith and Russell, under the act of Assembly passed in 181 , and probate was afterwards granted on the will of the said Charles S. Carson to Thomas Claiborne, of Nashville, Tennessee, who had intermarried with the widow of the said James King, and was named as executor in Carson's will. Among the property possessed by the said William King, at his death, was the saltworks situated in Washington county, a very valuable and productive estate. The said William Trigg and James King, during their lives, received two-thirds of the profits; after the death of the latter, his children, William, Thomas, Mary Eliza, and his widow, became entitled to the same, except one which, by his will, was devised to Charles S. Carson; these persons, as your orators are informed, received a portion of the profits of the said saltworks.

After the death of William Trigg, his widow and children, under his will, became entitled to his interest in the said estate; his widow has since intermarried with the said L. L. Henderson, who is also guardian for the children of the said Trigg; he has regularly received the profits of one-third of the saltworks, as your orators are informed, in right of his wife and her children, and appropriated the same to his own private account.

Many years have now elapsed since the death of William King; all the personal property has been disposed of in some way by those who have successively had it under their control; what may be the condition of debts due to the estate your orators do not know. Of the debts due from the estate, for the payment of which there appeared such ample means, a large portion, to the amount of one hundred and thirty thousand dollars, as your orators are informed, are yet unpaid; for many of them suits have been depending for several years. The defence of the said Henderson, who, by being executor of William Trigg, became executor of William King, is that there are no assets in his hands; very inconsiderable portions have been paid for several years; probably the payments have not equalled the interest, though collections have been made, which have been diverted to the said Henderson's private purposes, as your orators have heard.

An account has been directed by this honorable court of the administration of the several persons who acted as executors of the said estate; some progress has been made in the investigation, though no final result has been attained; but your orators are informed that it will appear that the personal estate of the testator was ample to pay all the debts; that considerable waste has been committed, a great part of which is chargeable to the said William Trigg and James King, particularly the former. As this account was ordered to ascertain the condition of the estate, and as no effects belonging to the estate of William Trigg and James King are to be found to satisfy the said debts, the creditors will seek satisfaction out of the real estate or from your orators.

When the said James King and William Trigg departed this life they respectively possessed considerable personal property; they also were the proprietors of two-thirds of the profits of the saltworks. Large sums of money must have been due to that concern, and large quantities of salt and other articles on hand, when they died; no inventory of the estate of the latter has ever been returned, as your orators believe, and but a partial one of the other: no account of either has been rendered. Under the present aspect

of the case your orators are threatened with great injury, and some of them with ruin; they will either be liable to the creditors for the waste committed by those for whom they are bound, or they will be liable to those entitled to the inheritance of the real estate. Should this court deem it its duty to lay its hands on that, for the satisfaction of the creditors long parried and unjustly delayed, your orators of course must suffer to make retribution to the heirs. Your orators, when they became securities, did so from motives of friendship; they expected no difficulties and no great delay. Eleven years have now elapsed and their situation is not only hazardous, but alarming; some of them are only in tolerable circumstances and in advanced life; the prospect before them promises embarrassment to themselves and poverty to their children; besides their responsibility increases every day. Of those who became security originally, there are about twelve who have become insolvent, some have removed to distant parts, out of the limits of Virginia, some are dead and their property scattered and diminished, others are progressing towards a state of irresponsibility; hence your orators have just cause to dread an accumulation of the evil that hangs over them, while those who receive the profits of that valuable estate, the saltworks, claiming as the representatives of William Trigg and James King, are dissipating the means which your orators conceive ought to be appropriated to avert their ruin.

The said Lilburn L. Henderson has lately become the purchaser of the interest of Francis Smith, who intermarried with the widow of the testator, William King, in the personal estate; he fancies, as your orators believe, that that interest will be augmented by fixing a large account of waste on his immediate testator, William Trigg, for whose children he is guardian, and on James King. He has declared to one of your orators that such is his intention; hence your orators have an unquestionable right to infer that he will not be the guardian of their interest: that he will not be very diligent to procure and apply the means to pay the debts of William King; but that he would rather add to the difficulties already existing, in order to effect the result which he considers promotive of his interest.

Your orators are informed that an agreement exists between Francis Smith, who intermarried with the widow of William King, the said Henderson, who represents the interest of William Trigg, as husband of his widow and guardian of his children, and the representatives of the said James King, by virtue of which the said Francis Smith has the exclusive management of the saltworks and the receipt of the profits, which he distributes among the claimants. These profits, so far as the claims of the representatives of William Trigg and James King are concerned, are, as your orators are advised, subject to the payment of the debts yet due from the estate of the said William King, particularly as the means which came into the hands of the said Trigg and King, under whom their representatives hold, have been wasted and destroyed by them. Those profits constitute the only means which now offer to secure your orators from the destruction which is impending; they conceive if they get into the hands of the said Henderson and the representatives of James King, the latter of whom reside in Tennessee, that they will be beyond the reclamation of those complainants. They conceive that this court has the power, and ought to exercise it, to preserve the said profits in anticipation of a final decision in the cases where the creditors are parties, in order to facilitate the recovery of their debts, and to secure your orators from signal injustice and injury.

These complainants are advised that the said Henderson, in his character of executor of William King, had nothing to do with the saltworks; that William Trigg and James King, under the will of the testator, took a freehold interest, which, or the profits of which, are liable, as in other devises of real estate, to the payment of debts in the hands of their representatives; that those profits are not legal assets in the hands of the executor of William King, but equitable assets in the hands of the devisees; consequently as executor, the said Henderson is not accountable, but if even he was, these complainants are apprehensive his responsibility is but nominal. When he entered into the execution of the will, the securities which he gave, in your orators' opinion, were entirely insufficient; since that time several of them have become insolvent, others have died, so that those who remain and are acceptable, (except William Mayo, of whose means your orators know nothing,) are not responsible for more than fifty or sixty thousand dollars, as your orators believe. These complainants also believe that the said Henderson has managed the estate to the great injury of those concerned, but whether from the confusion and want of system from the beginning, it will be possible to fix it on him, or to ascertain the amount, is uncertain; at all events, your orators apprehend that he would endeavor to set off any deficiency found to exist in his accounts, by his claim of the widow's interest in the personal estate, and thus throw the creditors on the real estate or against these complainants. Your orator Peter Scott, begs leave further to state, that he never executed the executorial bond, though his signature is affixed thereto; the transaction was as follows: Your orator was applied to to become one of the securities; he promised, and accordingly went to Abingdon, but while he remained the bond was not executed, there not being time to complete the business, though the court had fixed the penalty of the bond. Your orator being compelled to go home, departed, and did not return; the next day, as your orator understood, the court increased the penalty of the bond very considerably; your orator not being there, Mr. John Mitchell, to whom he had given no authority, placed your orator's signature thereto; your orator has never done any thing to ratify that act, and does not conceive himself bound thereby. He makes this statement to prevent any conclusion unfavorable to any future defence being drawn. He has joined in the present application to avail himself of any benefit which this honorable court may grant, should, in a future controversy, it be determined that he was bound by the act of the said Mitchell.

These complainants have thus distinctly stated their case to this honorable court, who alone is competent to afford that relief and protection which their case requires. They pray that the said Lilburn L. Henderson and Rachael his wife, Daniel Trigg, William Trigg, Connally Trigg, and Lilburn Trigg, children of William Trigg, Thomas Claiborne, and Sarah his wife, William King, Thomas King, Mary Eliza King, children of James King, and Francis Smith, may be made defendants to this their bill of complaint, and that they may severally answer the premises as fully and truly as if the same was again repeated and interrogated. That the said Francis Smith may be enjoined from paying to the other defendants, or any person in their behalf, any of the profits of the said saltworks now in hand or hereafter to be collected, either for debts due or for any proceeds hereafter to be drawn, and that the other defendants may be inhibited from demanding or receiving any part of such profits; that two-thirds of such profits of said saltworks be preserved as a fund to meet the outstanding debts for

which your orators, as securities, may be ultimately bound, and placed in the hands of a receiver, to be disbursed as this honorable court may think expedient, or in any other manner calculated to produce the end intended; that an account may be taken of all the profits received by the said William Trigg and James King, and their representatives, to relieve your orators if necessary; that such other and further relief may be granted, as it respects the future management of the said saltworks, and the disposition of the profits, as may tend to secure the great purposes of your orators; and that such other and further relief may be extended to them as justice may require. May it please your honor to grant your orators the commonwealth's writ of injunction and subpœna, directed, &c.

"This bill was sworn to."

D. SHEFFEY.

The following bonds were executed and filed:

Know all men by these presents, that we, James White, David Pierce, Benjamin Estill, and Daniel Sheffey, are held and firmly bound unto Lilburn L. Henderson, Thomas Claiborne, William Trigg, Daniel Trigg, Connally Trigg, and Lilburn Trigg, Francis Smith, William King, Thomas King, and Mary Eliza King, in the penal sum of one hundred thousand dollars, and for the payment thereof to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents; sealed with our seals, and dated this third day of June, in the year of our Lord 1819.

The condition of the above obligation is such, that whereas the above bound James White hath been appointed by the superior court of chancery, holden at Wythe court-house, to demand and receive from Francis Smith, or any person who may receive the same, the issues and profits of the saltworks, so far as concerns the interest of the representatives of William Trigg and James King, being two-thirds of the whole, and to apply the same as directed by an order made in a case in said court depending, wherein the said James White, Richard White, and others, securities of the said William Trigg and James King, are plaintiffs, and Lilburn L. Henderson and others defendants. Now if the said James White shall well and truly perform the duties assigned him by the said order, and in all respects conform to the direction of the said court, then the above obligation to be void, else to remain in full force and virtue.

JAMES WHITE, [L. S.]
DAVID PIERCE, [L. S.]
BENJAMIN ESTILL, [L. S.]
D. SHEFFEY. [L. S.]

Signed and sealed in the presence of
JOHN STALEY,
TAURUS MARSHALL.

Know all men by these presents, that we, James White, Richard White, Earl B. Clapp, William Gray, John Goodson, William King, James King, Thomas Tate, Charles Tate, Peter Scott, Peter Clark, John McCullock, Robert McCullock, John Buchannon, John Epperson, Robert White, Jos. Miller, James Talbot, Rufus Morgan, William Poston, Abraham Nordike, Michael Shaver, Henry Dickerson, Matthew Willoughby, William P. Thompson, G. T. Conn, Jacob Long, John Pettathews, William McHenry, William D. Wilson, Samuel Vance, Thomas Wilson, Francis Irby, Robert Cumings, Peter Minick, John Clark, Thomas Jamison, Matthew Buchan-

non, Peter Barns, Thomas Jamison, William Harley, John Galliher, John Clark, William Tankersley, George Smith, Robert Cumings, Arthur Campbell, William Apperson, James Newland, Daniel Lynch, James King, jr., William McNew, Charles Talbot, And. McHenry, and John Tate, are held and firmly bound unto Francis Smith, Lilburn L. Henderson, Thomas Claiborne, William Trigg, Daniel Trigg, Conally Trigg, Lilburn Trigg, William King, Thomas King, Mary Eliza King, in the penal sum of one hundred thousand dollars, and for the payment thereof, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, firmly, by these presents; sealed with our seals, and dated this second day of June, 1819.

The condition of the above obligation is such, that whereas the above bound James White, Richard White, and others, securities of William Trigg and James King, executors of William King, deceased, have prayed for, and obtained, an injunction from the superior court of chancery, holden at Wythe court-house, to prevent the said Francis Smith, his agents, and all other persons concerned, from paying away or disposing of, except in the manner directed by the said court, the profits of the saltworks which have accrued and not paid over, or which may accrue thereafter, and to restrain the said Thomas Claiborne, L. L. Henderson, William Trigg, Daniel Trigg, Connally Trigg, Lilburn Trigg, William King, Thomas King, and Mary Eliza King, their agents and guardians, from demanding and receiving the said issues and profits of the said saltworks:

Now the condition of the above obligation is, that if the said James White, Richard White, and others, who prayed for and obtained the said injunction, shall pay all such damages as the said defendants may sustain thereby, should the said injunction be dissolved or adjudged against the plaintiffs, and all costs that may be awarded, then the above obligation to be void, else to remain in full force and virtue.

James White, [L. S.]
Richard White, [L. S.]
Earl B. Clapp, [L. S.]
William Gray, [L. S.]
John Goodson, [L. S.]
James King, sen., by Jas. King, jr. [L. S.]
Thos. Tate, by C. Tate, [L. S.]
Charles Tate, [L. S.]
Peter Clark, [L. S.]
John McCullock, [L. S.]
Robert McCullock, [L. S.]
William Buchannon, [L. S.]
for J. Buchannon, [L. S.]
John Epperson, [L. S.]
Joseph Miller, [L. S.]
James Talbot, adm'r. of Bazel Talbot, deceased, [L. S.]
Abram B. Trigg, for Rufus Morgan, [L. S.]
Abram Nordyke, adm'r. of Jacob Mays, [L. S.]
M. Shaver, [L. S.]
W. P. Thompson, adm'r. of the estate of James Thompson, [L. S.]
William McHenry, by Andrew McHenry, [L. S.]
Jacob Long, [L. S.]
William D. Neilson, [L. S.]
Thomas Wilson, [L. S.]
Francis Irby, [L. S.]
Peter Minick, [L. S.]
Abram B. Trigg, [L. S.]
Matthew Buchannon, [L. S.]
Peter Byrns, [L. S.]
William Harley, [L. S.]
John Galliher, [L. S.]
John Clark, [L. S.]
William Tankersley, [L. S.]
George × Smith, his mark [L. S.]
Robert E. Cummings, [L. S.]
Arthur Campbell, [L. S.]
Edward Campbell, [L. S.]

111.

William Apperson,	[L. S.]	James King, jr.,	[L. S.]
James Newland,	[L. S.]	Charles Talbott,	[L. S.]
Daniel Lynch,	[L. S.]	Andrew McHenry,	[L. S.]
James King, jr.,	[L. S.]	John Tate,	[L. S.]
William McNew,	[L. S.]		

WASHINGTON COUNTY, to wit:

This day came before me, a justice of the peace for the said county, Francis Irby, who made oath that his estate, after the payment of his debts, is worth five thousand dollars. Peter Minick, who made oath that his estate, after the payment of his debts, is worth nine thousand dollars. Abraham B. Trigg, who made oath that his estate is worth eight thousand dollars, after the payment of his debts. Matthew Buchannon, who made oath that his estate was worth two thousand dollars, after the payment of his debts. Peter Burns, who made oath that his estate is worth six hundred dollars, after the payment of his debts. Thomas Jamison, who made oath that his estate is worth five thousand dollars, after the payment of his debts. William Harley, who made oath that his estate is worth fifteen hundred dollars, after the payment of his debts. Thomas Wilson, who made oath that his estate is worth three thousand dollars, after the payment of debts. John Gallaher, who made oath that his estate is worth three thousand dollars, after the payment of his debts. John Clark, who made oath that his estate is worth one thousand dollars, after the payment of his debts. William Tankersley, who made oath that his estate is worth two thousand dollars, after his debts are paid. George Smith, who made oath that his estate is worth one thousand dollars, after the payment of his debts. Robert Cumings, who made oath that his estate is worth ten thousand dollars, after the payment of his debts. Arthur Campbell, who made oath that his estate is worth three thousand dollars, after the payment of his debts. Edward Campbell, who made oath that his estate is worth six thousand dollars, after the payment of his debts. William Epperson, who made oath that his estate is worth three thousand dollars, after the payment of his debts. James Newland, who made oath that his estate is worth one thousand dollars, after the payment of his debts. Daniel Lynch, who made oath that his estate is worth one thousand dollars, after the payment of his debts. James King, jr., who made oath that his estate, after the payment of his debts, is worth sixty thousand dollars. William McNew, who made oath that his estate is worth three thousand dollars, after the payment of his debts. Charles Talbot, who made oath that his estate is worth three thousand dollars, after the payment of his debts. Andrew McHenry, who made oath that his estate is worth three thousand dollars, after his debts is paid. John Tate, who made oath that his estate is worth twenty-five thousand dollars, after the payment of his debts; and who signed and acknowledged the within respectively.

Given under my hand and seal this 4th day of June, 1819.

JOHN GIBSON.

On which the following subpœna issued, viz:

The Commonwealth of Virginia to the marshal of the Wythe chancery district court, greeting: You are hereby commanded to summon Lilburn L. Henderson, executor of William Trigg, deceased, who was executor of William King, deceased, and Rachel Henderson, wife of the said Lilburn L. Henderson, William Trigg, Daniel Trigg, Connally Trigg, and Lilburn Trigg, children of William Trigg, Thomas Claiborne, and Sarah his wife,

William King, Thomas King, and Rachel Mary Eliza King, children of James King, deceased, and Francis Smith, to appear at the clerk's office of our superior court of chancery, holden at Wythe court-house, for the district of Wythe, on the first Monday in August next, to answer a bill in chancery, exhibited against them by James White, Richard White, John Goodson, James King, William King, Peter Clark, Joseph Miller, Thomas Tate, Charles Tate, John McCullock, Robert McCullock, John Buchannon, William McHenry, William Poston, Peter Scott, Earl B. Clapp, William Gray, Henry Dickinson, Samuel Vance, John Pettathews, executor of John J. Trigg, deceased, Rufus Morgan, William D. Neilson, Bazell Talbot, Michael Shaver, William P. Thompson, and Gerard T. Conn. And in this they shall in nowise omit, under the penalty of £100; and have there then this writ. Witness James Ewell Brown, clerk of our said court, this 5th day of June, in the year of our Lord 1819, and the 43d year of the Commonwealth.

J. E. BROWN.

To enjoin the defendant, Francis Smith, his agents, and all other persons concerned, from paying away, but in the manner hereafter directed, or otherwise disposing of the issues and profits which have accrued, and are not paid over, or which may hereafter accrue (necessary expenses excepted, and excepting also a draft drawn by Lilburn L. Henderson, executor of William King, in favor of the commissioner appointed to take the account of the administration of the estate of the said William King) of the saltworks, in the bill mentioned, so far the interest devised by William King, in his last will and testament, to William Trigg and James King, is concerned; and also to enjoin the defendants Lilburn L. Henderson, Thomas Claiborne, William Trigg, Daniel Trigg, Connally Trigg, and Lilburn Trigg, children of William Trigg, deceased, William King, Thomas King, and Rachel Mary Eliza King, their agents or guardians, from demanding any portion of said profits. But the effect of this injunction is to be suspended until the plaintiffs enter into bond with sufficient security, in the clerk's office of this court, in the penalty of one hundred thousand dollars, conditioned to pay all such damages as the defendants, or either of them, may sustain; and all costs which may be awarded against the plaintiffs. And it is ordered that James White be appointed receiver, who shall, on his giving bond, with security, in the penalty of one hundred thousand dollars, in the clerk's office of this court, conditioned for the faithful discharge of his duty, have power and authority to demand and receive, from time to time, *as they may be received* from the said Francis Smith, or any other person who shall hereafter *receive* them, such issues and profits, and apply the same as equitable assets to the payment of the outstanding debts yet due from the testator William King's estate, so far as they may come to his knowledge; and make report of his proceedings, from time to time, to this court. The said receiver, it being undersood, agreeing to act without commission on the money so received, or other compensation to be paid out of the estate of William King, or by the defendants. But the effect of this order is to terminate whenever the defendants shall make it appear that they have given or tendered to the plaintiffs satisfactory security to indemnify them against any injury which they may sustain as the securities of William Trigg and James King, or make it otherwise appear that a continuance of this order is unnecessary.

Test, J. E. BROWN, *C. C.*

Bond and security has been given by the plaintiffs, and by White the receiver.

Teste, J. E. BROWN.

Return.

Executed on L. L. Henderson, and William, Daniel, Connally, and Lilburn Trigg, and Francis Smith, and Thomas and Rachel Mary Eliza King, by David Campbell, jr., and Rachel Henderson, wife of L. L. Henderson, June 19th, 1819.

HAROLD SMYTH,
Marshal W. C. D. C.

And at August rules, 1819, a new subpœna was awarded, which is as follows, viz:

The Commonwealth of Virginia to the marshal of the Wythe chancery district court, greeting: You are hereby commanded to summon Lilburn L. Henderson, executor of William Trigg, deceased, who was executor of William King, deceased, Rachel Henderson, wife of the said Lilburn L. Henderson, William Trigg, Connally Trigg, and Lilburn Trigg, children of William Trigg, Thomas Claiborne, and Sarah his wife, William King, Thomas King, and Rachel Mary Eliza King, children of James King, and Francis Smith, to appear before the judge of our superior court of chancery, holden at Wythe court-house, on the first day of the next term, to answer a bill in chancery, exhibited against them by James White, Richard White, John Goodson, James King, William King, Peter Clark, Joseph Miller, Thomas Tate, Charles Tate, John McCullock, Robert McCullock, John Buchannon, William McHenry, William Poston, Peter Scott, Earl B. Clapp, William Gray, Henry Dickerson, Samuel Vance, John P. Mathews, executor of John Trigg, deceased, Rufus Morgan, William D. Neilson, Bazel Talbot, Michael Shaver, William P. Thompson, and Gerard T. Conn. And this they shall in nowise omit, under the penalty of £100. And have then there this writ. Witness James Ewell Brown, clerk of our said court, at Wythe court-house, the 4th day of September, 1819, and in the 44th year of the Commonwealth.

J. E. BROWN.

Return.

Executed on all the defendants except Thomas Claiborne and wife, and William King, who are non-resident, by a former subpœna.

HAROLD SMYTH,
Marshal W. C. D. C.

And at October term, 1819, James White, the receiver appointed by an order made in this cause at the last term, having made a report of his proceedings since his said appointment, it is ordered that the same filed; and it is further ordered that the said receiver have power, in case any of the creditors of William King refuse to accept their proportion of the bank notes reported by him to be now in his possession, to pay such proportion to any of the other creditors who will receive the same. And it is further ordered, that the defendant, Francis Smith, deliver to the said James White, for collection, any obligation which he has in his possession, taken by him or any other person, for any of the proceeds of the saltworks embraced by the said order, made in this cause at the last term.

His report is as follows, viz:

The undersigned having been appointed receiver by the superior court of chancery, holden at Wythe court-house, by virtue of an order made at the last May term, in a case between the securities of William Trigg and James King, and the executors and devisees of William King, deceased, pursuant to what he considered his duty, called on Francis Smith, in whose hands the funds of the saltworks were enjoined, for such moneys as might be in his possession, being the proportion of the interest of the devisees of the said William Trigg and James King, of the money then actually on hand. The said Francis Smith paid the undersigned three thousand five hundred and forty-one dollars, in notes on different banks in Tennessee and Huntsville, and a small part in notes on a bridge company in Georgia. The undersigned offered the proper proportions to several agents or attorneys of creditors, who refused, except Daniel Sheffey, who received six hundred dollars, as attorney for Gordon and others, and Neil and Harley. The undersigned retained his proportion, being a creditor. The balance of said amount is still in the possession of the undersigned, subject to such order as this honorable court shall make.

The said Smith has since offered more of the same sort of paper, but the undersigned has declined receiving it, without the order of this honorable court. He has also offered sundry obligations on persons who stand indebted to the saltworks, which were also declined. All of which is respectfully submitted.

JAMES WHITE.

And at November rules, 1819, the defendants, L. L. Henderson, Rachel Henderson, William, Daniel, Connally, and Lilburn Trigg, children of W. Trigg, Thomas and Rachel Mary Eliza King, by D. Campbell, their guardian, and Francis Smith, who have been served with the subpœna three months, not having answered, on the motion of the plaintiffs, by their counsel, it is ordered, that the bill be taken for confessed, and the court, at a future day, will proceed to decree the matter thereof, unless the said defendants, on or before the third day of the term next after they shall have been served with a copy of this order, appear and show cause to the contrary.

WYTHE, *to wit:*

This day Harold Smyth came before me, a Commonwealth's justice of the peace for said county, and made oath that a copy of the within was served on L. L. Henderson, for himself and wife, and William, Daniel, Connally, and Lilburn Trigg, and on Thomas and Rachel Mary Eliza King, by D. Campbell, guardian, and on Francis Smith, January 19th, 1819.

Given under my hand this 1st day of October, 1821.

RICHARD MATHEWS.

And at May term, 1820, James White, who has been appointed receiver of the monies due the estate of William King, deceased, arising from the profits of the saltworks, having made a report of his proceedings relative thereto, it is ordered that the same be filed.

The undersigned, appointed to receive the rents, issues, and profits of the saltworks, late the property of William King, so far as the interest of the representatives of William Trigg and James King is concerned, pursuant

to the order of the honorable the chancery court, holden at Wythe court-house, respectfully submits to the court an account of his receipts and disbursements since his last report.

The undersigned, on the 27th October, 1819, received from Francis Smith, Esq., in sundry obligations, for and on account of the profits of the said saltworks which had previously accrued, amounting to $19,552 50 principal, and $1,633 84 interest, due on that date. He has also received the sum of $2,699 50, in notes on various banks and cash. The details of these receipts are stated in a paper exhibited as part of this report.

The aggregate of these sums constitute the whole amount received.

The amount of bank notes in the hands of the undersigned, as stated in his last report, he retained, except $492, notes not current, and applied towards the payment of a debt due him from the estate of William King, no other creditor being willing to receive them at par. He was advised that he had a right so to do, particularly as he, as sheriff of Washington county, is now the representative of that estate, having it committed to him by the superior court of that county.

The undersigned has delivered to Granville Henderson, Esq., as the attorney of John and Robert Gamble, and took his and Manasses Friel's obligation to the amount of $7,400 principal, and $514 interest, and paid him $1,810 in cash. He has also paid to Gen. Francis Preston, a creditor, the sum of $4,530 50, and to D. Sheffey, as the attorney of Neil & Harley, creditors, the sum of $560. These are all the receipts and disbursements since the last report.

All of which is respectfully submitted.

JAMES WHITE.

May 25th, 1820.

And at October term, 1820, James White, who has been appointed receiver of the money due the estate of William King, deceased, arising from the profits of the saltworks, having made a report of his proceedings relative thereto, it is ordered that the same be filed.

His report is as follows:

The undersigned, appointed by the honorable the superior court of chancery, holden at Wythe court-house, receiver of the profits of the saltworks, formerly the property of William King, has the honor to submit an account of his proceedings since the last term.

The undersigned has received, since that period, on account of the interest submitted to his care, the sum of thirty-six thousand one hundred and fifty-two dollars and sixty-nine cents, in paper on different banks, a detailed account of which is herewith exhibited.

From the said statement it will be seen that a considerable portion of the money is in paper, which the creditors residing to the eastward will not receive. The undersigned has the whole, not paid to creditors, ready to dispose of as this honorable court shall direct. Should it be left in his hands, he will adopt measures which he believes will enable him to have it converted into such money as the creditors will receive.

The undersigned has paid Francis Smith, for Alexander Smyth, under the order of the court, $2,000, in part compensation for taking the account directed. 2. He has paid $3,876 82, being the amount of an execution, with costs, issued from the circuit court of the United States for the Virginia district, at the suit of Alexander and James Fulton against the estate

of William King; the reason why the undersigned paid the whole of this claim was, that the creditors received a portion in Tennessee Bank paper at par, and there being no doubt of the sufficiency of the fund for the ultimate payment of all the debts now known. In paying this execution, the undersigned saved five months' interest and the marshal's commissions.

3. To Granville Henderson, as attorney for Cook and Wax, and the administrators of Robert Gamble, $6,000, in a draft on Talbot Jones, Baltimore.

4. To Daniel Sheffey, attorney for Neil and Harley, creditors of said estate, in a like draft, $3,000.

All which is respectfully submitted.

JAMES WHITE.

And at a court held on Friday, October 27th, 1820, the court deeming it for the interest of all the parties concerned in this cause that James White, the receiver, shall retain in his hands the money which he has reported, which the creditors will not receive, it is ordered, that the said receiver retain the said money for the purpose of converting it into such a medium as may suit the creditors of the estate of William King. And, on the motion of David Campbell, guardian of two of the infant children of James King, deceased, it is ordered, that the said receiver pay to him, out of any money in his hands, the sum of $893 08 cents, being the amount of the said Campbell's, guardian's, account. And it is further ordered, that the said receiver, out of any money in his hands, pay to the officers of this court any fees which they may have against the representatives of James King, deceased, incurred by them in the prosecution of their suits in this court.

And, at May term, 1821, on the motion of James King's children, by their counsel, it is ordered, that Master Commissioner Mathews take an account, and exhibit a statement, shewing the amount of debts yet due to the creditors of William King, deceased; also, what sums have gone into the hands of James White, as receiver, under the order of this court, and how the same has been disposed of by him, and that he make report thereof to the court at this term.

And, at the same term, James White, who was appointed receiver of the profits of the saltworks, this day made report of his proceedings since the last term; which is ordered to be filed. His report is as follows, viz:

The undersigned, appointed receiver by the honorable the superior court of chancery, to collect the rents, issues, and profits of the saltworks, so far as the interest of the representatives of James King and William Trigg extend, begs leave to submit to the said court, a statement of the receipts and disbursements since the last report, made at the October term, 1820, viz:

Receipts.

A draft from Francis Smith, Esquire, on Stephen S. Ewing, of Huntsville, being on account of debts due to the saltworks before the appointment of the undersigned, payable in Huntsville Bank notes, and so paid - - - -	$3,400	00
Do. do. - - - - -	1,000	00
Amount of receipts - -	$4,400	00

Disbursements.

Paid William Galt - - - - - -	$496	00

Paid Cook and Wax	2,626 00
John and Robert Gamble	7,878 00
	$11,000 00
Neil and Harley	2,000 00
Thompson Atkins	308 50
Granville Henderson, fees	40 00
Peter Mayo, for Treadway, Pollock, and Co.	150 00
James E. Brown, for clerk's fees	106 62
Francis Preston	5,000 00
Amount of payments	$18,605 12
Retained for Robert Gordon and Co.	$6,500 00

All of which is respectfully submitted.

JAMES WHITE.

And at October term, 1821, on the motion of James King's children, by their guardian ad litem, it is ordered, that Master Commissioner Mathews take an account, and exhibit a statement, shewing the amount of debts yet due to the creditors of William King, deceased; also, what sums have gone into the hands of James White, as receiver, under the order of this court, and how the same has been disposed of by him; and that he make report thereof to this court at the next term, together with any matter specially stated, thought pertinent by himself, or required by any of the parties so to be stated.

And at the same term, James White, who has been, by an order of this court, appointed receiver in this suit, exhibited an account of money received and disbursed by him; which was examined, and ordered to be filed. His report is as follows, viz:

The undersigned, appointed receiver by the honorable the superior court of chancery holden at Wythe court-house, in the case wherein the securities of James King and William Trigg are plaintiffs, and the devisees of William King, &c., are defendants, begs leave to report, that since the last term he has received, on account of the fund committed to his superintendence, the sum of $1,340 65 from Francis Smith, on account of outstanding debts of the saltworks, in notes on the Bank of Tennessee.

The undersigned being now the lessee of the saltworks, is liable for the rent, the sum of $20,000, and interest $300; these two sums are payable in par money. Of which amount the undersigned has disbursed the following sums, viz:

To Granville Henderson, as attorney for John and Robert Gamble, $6,000; to the sum of $3,000 as attorney for Cook and Wax; these two sums were paid in a draft on Baltimore.

To Peter Mayo, as attorney for Pollock, Treadway, and Co., $4,254.

To Thompson Atkins, a judgment creditor, $100.

To D. Sheffey, attorney for Neil and Harley, $1,256 54; all these have been paid and are payable in par money.

Retained for Gordon, Trokes, and Co., $6,000; not yet paid.

When the undersigned reported at the last term, he stated that he had retained for Gordon, Trokes and Co., $6,500; this sum he has since paid to them. There are several other disbursements, composed of various small

items, the precise amount of which the undersigned cannot now ascertain; these will be hereafter reported.

All which is respectfully submitted.

JAMES WHITE.

And at October term, 1822, this day James White, who has been appointed receiver in this cause, presented an account and report of his proceedings since the last term, which is ordered to be filed. His report is as follows, viz:

To the Honorable John Brown, Judge of the superior court of chancery holden at Wythe court-house:

The undersigned, appointed receiver of this honorable court in the case of White and others against King's heirs and others, begs leave to report the state of his transactions since the last report.

The undersigned has received from Harold Smyth, on account of a debt due to the saltworks from S. Lyon, $156 23.

The undersigned is liable for the payment of one year's rent on the 1st day of September last, $20,000; interest on half that sum six months $300.

The undersigned has paid the $6,000 stated in his report of October, 1821, as being retained for Gordon, Trokes, and Co.

The undersigned gave a draft to Granville Henderson, as attorney for Henry Wax and John and Robert Gamble:

Draft on Baltimore for - - - - -	$12,205 64
To D. Sheffey, as attorney for Neil and Harley - -	469 50
	$12,675 14
Paid Harold Smyth, marshal's fees - - - - -	104 81
Paid Benjamin Estill, as attorney for Gordon, Trokes, and Co.	125 00
Delivered to Benjamin Estill a draft on Talbot Jones, being for the benefit of Gordon, Trokes, and Co. - -	4,875 00
	$17,779 95

All which is respectfully submitted, October term, 1822.

JAMES WHITE.

October 25th, 1822.

And at the same term, on the motion of the plaintiffs, by their counsel, and for reasons appearing to the court, it is ordered, that the defendant, Francis Smith, pay into the hands of James White, heretofore appointed receiver in this case, the sum of $7,408, with interest from the 30th October, 1815, that being admitted to be the amount in his hands as one of the executors of Charles S. Carson, as appears by the papers in a cause depending in this court between Thomas and Rachael Mary Eliza King, plaintiffs, and the said executors, defendants, which said sum being a portion of the proceeds of the saltworks not paid over, the court is of opinion is embraced by the order made in this cause on the 27th day of May, 1819.

And at May term, 1822, it appearing to the satisfaction of the court that the order made in this cause, so far as directs the payment of the sum of $7,400, with interest thereon from the 30th of October, 1815, to James White, as receiver, by the executors of Charles S. Carson, deceased, was entered under erroneous impressions as to the situation of the assets, it is,

therefore, by the consent of the parties, ordered, that the said order be set aside.

And, at the same term, James White, who has been appointed a receiver in this cause, this day made a report of his proceedings; which was examined, and ordered to be filed. His report is as follows, viz:

To the Honorable John Brown, Judge of the superior court of chancery holden at Wythe court-house:

The undersigned, appointed receiver by this honorable court in the case of White and others against King's devisees and others, begs leave, respectfully, to report, that since the last report he received eighteen hundred dollars in Tennessee Bank notes, which, at Huntsville, where it was received, was twenty-six per cent. below par. This money was received from Stephen S. Ewing on account of a debt due to the saltworks before the appointment of the undersigned, and which was heretofore reported, being on account of a note due from Henderson and Beaty to Francis Smith, as executor of James King.

All which is respectfully reported.

JAMES WHITE.

And at October term, 1823, James White, who was appointed receiver in this case, this day presented in court an account of his proceedings, which was ordered to be filed. His report is as follows, viz:

The undersigned, appointed receiver by the honorable the superior court of chancery holden at Wythe court-house in the case depending between the securities of James King and William Trigg and the executors and devisees of William King, begs leave to report, that since his last report he has received nothing on account of the fund committed to his superintendence, except that part of the rent of the saltworks, which the devisees would be entitled to after the payment of debts, the whole amount being $30,000, two-thirds whereof is - - - - - $20,000 00

Interest - - - - - - - 300 00

Out of which the undersigned has paid Joseph Trigg, in pursuance of an order of this honorable court last term, - - - $2,000 00

He has retained for Gordon, Trokes, & Co., creditors - 4,000 00

He paid Francis Preston, a creditor - - - - 4,000 00

He has drawn a draft in favor of Catharine Gamble, assignee of Gamble's administrator - - - - 7,000 00

Paid the marshal, H. Smyth, for execution J. Newland *vs.* King's executor, and sundry tickets - - - 217 81

All which is humbly submitted.

JAMES WHITE.

And at May term, 1824, James White, who has been by an order of this court appointed receiver of the proceeds of the saltworks, the property of the representatives of William King, deceased, presented in court a report of his proceedings as receiver, which is ordered to be filed. His report is as follows, viz:

To the Honorable John Brown, Judge of the superior court of chancery holden at Wythe court-house:

The report of the undersigned, receiver of the funds of the saltworks, &c., respectfully represents, that since his last report nothing belonging to

the fund committed to his superintendence has come to his hands, except as hereafter mentioned. There have been placed into the hands of the undersigned, by Francis Smith, a number of obligations on persons residing in Tennessee and Alabama, amounting to $14,390 32, which are enumerated in a schedule herewith exhibited; of this sum the undersigned has collected four hundred and forty dollars in Tennessee money, and two hundred and thirty in money rated at par. The undersigned has given an order to D. Sheffey, Esq., for the amount of a decree rendered in behalf of Echilberger & Co. against the estate of William King, which, with the costs, &c., amount to $404 29.

All which is respectfully submitted.

JAMES WHITE.

And at October term, 1825, James White, the receiver of the proceeds of the saltworks, appeared in court and filed a report of his proceedings; and thereupon, on his motion, it is ordered, that an account of his transactions as receiver as aforesaid be taken before Master Commissioner Mathews, to be by him examined, stated, settled, and to the court reported, together with any matter specially stated, thought pertinent by himself, or required by either of the parties so to be stated. His report is as follows, viz:

To the Honorable John Brown, Judge of the superior court of chancery holden at Wythe court-house:

The undersigned, appointed by this honorable court as receiver of the profits of the saltworks and appurtenances, late the property of William King, begs leave to report, that since his last report made to this honorable court and filed among the papers, he has received on account of the property placed under his superintendence, the following sums, viz:

Amount of rent, being the portion of the devisees, excluding the third part due to Captain Smith, who intermarried with the testator's widow, which rent was due on the 1st September, 1824 - - -	$20,000 00
Received on account of debts placed into his hands on the 3d November, 1823, from different persons in the States of Tennessee and Alabama, say - - - - -	4,500 00
Out of which the undersigned has disbursed the following sums:	
To Joseph Trigg, in part of his decree rendered in this honorable court - - - - - - - -	3,531 80
To Alexander Smyth, as attorney for John and Robert Gamble, in full - - - - - - - -	8,090 50
To amount paid D. Sheffey, as attorney for Joseph Bullies and wife, and Margery Allen, pursuant to a decree of this honorable court - - - - - - -	817 56
Retained for Gordon & Co. to settle their claim in full -	3,000 00
Paid Francis Preston, a creditor - - - -	6,000 00
Paid Thompson Atkins, on account of a judgment - -	100 00
Paid sundry officers' tickets, about - - - -	50 00

All which is respectfully submitted.

JAMES WHITE.
October 26, 1825.

And at May term, 1826, James White, the receiver, this day presented his report, which is ordered to be filed. It is as follows, viz:

116.

To the Honorable John Brown, Judge of the superior court of chancery holden at Wythe court-house:

The undersigned, appointed receiver by this honorable court to receive and disburse the profits of the saltworks belonging to the estate of William King, deceased, being advised that it is proper that he should specially report the condition of the said property since the lease granted to William and John Sanders expired, begs leave to submit a special statement shewing how the property is now holden.

It will be seen by reference to the papers in the case in which the appointment of the undersigned was made, that the said Messrs. Sanders's had leased the said saltworks from the 1st day of September, 1819, to the 1st day of September, 1824, which lease the undersigned afterwards acquired by purchase.

Before that lease expired, the undersigned, believing that the five years' rent and other means which would become available, would discharge all the debts and legacies, entered into a contract with Thomas Claiborne, who had intermarried with the widow of James King, by which he purchased the whole interest which he and his wife had in the profits of the saltworks after the said 1st day of September, 1824.

The undersigned also purchased the interest of William King, son of James King, in the said saltworks, derived from the will of his father, to which reference may be had. The latter contract being made while the said William King was under age, has since been duly ratified by him, by which his interest has passed to the undersigned.

The interest of Thomas King, son of James, was purchased by the said William King for the joint benefit of himself and the undersigned, on which upwards of $1,800 have been paid by the undersigned. The said Thomas then was and still is under the age of twenty-one years.

The undersigned also rented from Francis Smith the one-third part of the saltworks during the life of his wife, late the widow of William King, deceased, at an annual rent of $8,200 or $8,300, including the hire of twenty grown male slaves. He also rented from Peter Branch, as the husband of William Trigg's widow and guardian of his children, one-third of the said saltworks at $6,000 per annum, leaving it discretionary with the children to depart from the contract when they arrive at full age. The understanding between the said Branch and the undersigned was, that unless the debts due from the estate of William King rendered the application of the rent necessary to discharge them, the rent should be paid to the said Branch. In consequence of this agreement the undersigned has made sundry payments to a considerable amount, probably $1,200.

From this statement it appears that the undersigned is proprietor and tenant for life of the whole interest except that belonging to the daughter of James King; her interest the undersigned considers he contracted for with the said Claiborne, the executor of the said James King, who had power to contract, as the undersigned is advised.

The disclosure contained in the foregoing statement is made to satisfy the importunity of those who claim an interest. The undersigned submits to this honorable court the disposition of the subject.

There are yet considerable sums claimed by persons as creditors and legatees, amounting, as the undersigned believes, to upwards of $40,000; what may be the result when the claims are investigated cannot be forseen.

The debts placed in the hands of the undersigned and not collected, do not, as well as he recollects, exceed $5,000.

JAMES WHITE.

And at the same term, this cause, by consent, came on to be heard, so far as relates to the report of Master Commissioner John P. Mathews, directed to be taken by this court, to ascertain the state of the accounts between the receiver and the funds committed to his superintendence, and the exceptions to his said report. The court, on hearing the arguments of counsel, is of opinion that the exception to the allowance of interest on the balance in the receiver's hands ought to be overruled; the court is further of opinion that the receiver is subject to the actual par value of any money he may have received in discharge of debts due to the said fund, dischargeable in depreciated paper, and when depreciated paper was received by the receiver in discharge of other debts, where such act was prudent to prevent the loss, by insolvency, or where a recovery in good money was either difficult or uncertain; but the facts before the court are not sufficient to enable this court to apply the rule believed to be proper in those cases; it is therefore ordered, that the said report be recommitted to Master Commissioner Mathews, who is hereby directed to reconsider the subject, as also to state an account of the reasonable expenses which the receiver has been subject to in the performance of his duty, and a reasonable allowance to counsel for their aid and instructions in the various concerns which the subject involved, together with any other matter thought pertinent by himself or required by the parties to be stated.

The following report was filed 27th October, 1826:

To the Honorable John Brown, Judge of the superior court of chancery holden at Wythe court-house:

The undersigned, appointed by this honorable court to receive and disburse the profits of the saltworks belonging to the estate of the late William King, begs leave to report, that since his last report he has received from Robert and William Dickson, of Tennessee, on account of a debt due to the saltworks and placed into the hands of the receiver, the sum of $3,000, of which there was southern bank notes to the amount of about $2,600, which were at a discount of about five per cent.; as the debtors would not make a discount, the receiver thought it better to receive it at par than to hazard the delay and uncertainty of a recovery, and gave his receipt for the nominal amount. This money was paid in Alabama in March last.

The receiver has also received about $500 from John Campbell, of Tennessee, in Tennessee bank notes; this was the best that could be done, the said Campbell being in doubtful circumstances. This sum may be something more than received, not having the means with him to ascertain the amount precisely.

The receiver disbursed since the last report the sum of $71, paid to the attorney of Thompson Atkins, a creditor of William King's estate.

JAMES WHITE.

And at May term, 1827, this day came James White, the receiver in this case, and presented a report of his transactions as receiver as aforesaid, which is ordered to be filed. And on the motion of the heirs of James King, deceased, and the heirs of William Trigg, deceased, by their counsel, it is ordered, that Master Commissioner Mathews, to whom the re-

117.

port heretofore made by him relating to the management of the receiver, James White, was recommitted for examination and adjustment, do, in addition to the accounts heretofore stated by him in said report, examine and state all subsequent transactions of the receiver relating to the fund committed to him, so far as the same is practicable.

White's report is as follows, viz:

To the Honorable Allen Taylor, Judge of the superior court of chancery holden at Staunton:

The undersigned, receiver of the saltworks belonging to the estate of William King, begs leave respectfully to report, that since the month of September, 1824, he has been in possession of the saltworks under contracts made with Francis Smith, who intermarried with William King's widow, and is entitled to one-third; with Peter J. Branch, who intermarried with William Trigg's widow, and who is guardian of his children; with Thomas Claiborne, who intermarried with James King's widow, and is entitled to one-ninth; with William King, son of James King, whose interest is uncertain. The undersigned also believes that he had acquired the interest of the other two children of James King, the interest of which is also uncertain; but they contest the contracts under which this respondent believed himself entitled, and a suit is now depending in this honorable court, brought by them, involving the question. The rent which would probably belong to the fund committed to the charge of the undersigned, would be twelve thousand per annum, including the whole two-thirds remaining after the dower right.

In relation to this matter, the undersigned has acted in the following manner: There being claims against the estate of William King of about $40,000, the most of which were contested, the undersigned thought it proper to pay a part of the funds to the devisees, reserving to himself the right, should the payment of debts render it necessary, to call on them to refund. In this way the undersigned has disbursed the following sums, not before reported:

To Alexander McCall, who intermarried with the daughter of James King - - - - - -	$7,223 00
To Peter Branch, a claim due to the fund - - -	7,223 00
To the same in various payments - - - -	2,800 00

The undersigned is the assignee of a legacy of $6,000, with interest for some years, amounting to about $9,000; this sum the undersigned considered it his right to retain, the legacies being charged on the saltworks, unless the payment of debts rendered it necessary to pay it over to creditors.

The payments made to creditors which have not been reported are the following:

To Charles C. Johnston, attorney for Thompson Atkins -	$248 30
To same, as counsel in the case of Bolton Jackson against William King's estate, in this court - - -	20 00
To Charles Johnston, attorney for Francis Preston - -	4,000 00
To Edward Campbell, as counsel for the estate - -	100 00
	$4,368 30
To Thompson Atkins - - - - -	30 00
To Benjamin Estill, as counsel for the estate - - -	50 00

To Henly Chapman, as counsel for the estate against Henry L. Sheffey - - - - - - - 50 00

To Alexander Smyth, as attorney for John McKim, being the amount of a decree rendered this term, with interest to the 31st October, 1827 - - - - - 12,190 00

Besides the above the undersigned considers himself entitled to expenses disbursed in the administration of the fund since May, 1819; the subject is now before Master Commissioner Mathews.

During the progress of the duties of the undersigned from the commencement of the trust until this time, the undersigned has received the aid of D. Sheffey in directing him in his various duties, examining his accounts, and constructing his reports; these services the undersigned would have compensated had he received any compensation himself, but as the late chancellor refused to allow any, he does not believe that it can justly be required of him. This subject is also before Master Commissioner Mathews; the undersigned refers the court to the account and proof in support of it.

The undersigned has received nothing since his last report on account of the fund committed to his charge. The original order by which he was appointed, directed that the undersigned should receive the profits of the salt-works that should accrue, as well as those which had accrued and were not collected at the time; there were in the hands of Francis Smith a number of obligations for salt sold before, which remained uncollected; the sum of $7,223 paid to McCall, and a like amount to Peter Branch, as hereinbefore stated, consisted of part of these obligations; for these the undersigned is liable if the payment of debts require it.

There are still some claims against the estate, some of which are contested; among them is one of Bolton Jackson, for which there is now a suit depending in this court, amounting to about $8,000; the others known to the undersigned do not exceed $7,000. There are, independent of these, claims for court charges in a variety of suits, which are not ascertained.

All which is respectfully submitted.

JAMES WHITE.

The undersigned has also paid to D. Sheffey the sum of $336, being the amount of a legacy left to Margaret Allen, with two years' interest, the said D. Sheffey being the attorney of the said Margaret.

JAMES WHITE.

The following papers were filed with the foregoing report, viz:

The within statement is a copy of the settlement made between Captain Francis Smith, Mr. Branch, and myself, although Mr. Branch's name does not appear on the paper, and it will be perceived that it is predicated on the list of balances due to Saltville, as then reported by Alexander Findlay, remaining in the hands of Captain Smith, as a part of the funds due Saltville at the time the injunction of White and others was obtained, and which had been ordered, as I understood, to be paid over to White, as the receiver; it will be perceived, also, how the two-thirds of the account came into my hands, and of what debts it was composed.

I was told by Smith that Garner's notes were payable in good funds; I say I was told so, because I had then never seen the notes, they being at that time in the hands of Mr. S. Ewing, of Huntsville; when I came to get them as I did, through the order of Captain Smith, I found that both Mr. Smith and myself had been deceived, or I was so myself, as will appear

118.

by reference to the notes themselves. I therefore, being liable to great losses in consequence of that fact, wrote to Mr. Smith that I would not hold myself liable for the said notes in the manner I had agreed, and do not and will not agree to the arrangement; I have, however, endeavored to procure a settlement of them by Garner for the benefit of all concerned without success, nor do I believe that any thing will ever be gotton for them, owing to the very great neglect in securing them long since, when I am satisfied they might have been collected with proper attention. I know of no other funds paid by White to the heirs of James King as enjoined funds but the above, and these never came into his hands.

TH. CLAIBORNE.

The aggregate of the balance of the debts on the other side of this paper, as found due to William Trigg's estate, James King's estate, and Thomas Claiborne, viz: the sum of $14,040 89½ cents, has been paid to the said Claiborne in the following manner, by the notes and on the persons described, viz:

The notes of Brice M. Garner, at half their nominal amount, is equal to	$3,541 13
The note, O'Brien and others	9,341 17
Gen. Francis Preston's debt, admitted by him and paid	100 00
James White's	100 00
Mr. and Mrs. Branch's notes, aggregating	373 46
John H. Fulton's note	43 45
Isaac Baker's	420 17
Edward Campbell's account	23 87
	$13,943 25
Add Oliver Hughes's note	94 50
	$14,037 75

Signed duplicates. Errors excepted.

TH. CLAIBORNE,
FRANCIS SMITH.
22d October, 1826.

Aggregate of debts due to Saltville, as reported by Alexander Findlay, including Gen. Preston's debt of	948 85
As good debts, amounting to	20,634 05
Gen. Preston's debt taken out as disputed	948 85
	$19,685 20
To which add Gen. Preston's debt as admitted to be due by him, and paid by him to Thomas Claiborne as a part of his share of the debt. This is a part of the above debt of Preston's deducted above	100 00
Francis Smith's debt, including the sum of $236 59, which he loaned to Gen. Preston out of the Saltville funds, and charged his own private account to the General	5,131 01
Brice M. Garner's debt of $7,082 26, considered doubtful, but which Thomas Claiborne has agreed to receive for one-half, equal to	3,541 13

Warehouse and lot at Dittoe's landing, taken by F. Smith, Esquire, at - - - - - -	800 00
	$29,257 34
Deduct one-third as Capt. Smith's part, is - - -	9,752 44⅓
	$19,504 89⅔
Deduct for balance of legacies due to John Mitchell and M. Litchfield, left in the hands of Captain Smith - -	5,464 00
	$14,040 89⅔
Of which sum one-half belongs, in the following proportions, to William Trigg's estate, James King's heirs, and Thomas Claiborne, to wit:	
To William Trigg's estate one-half - - - -	7,020 44⅔
To James King's heirs two-thirds of one-half - -	4,680 30
Thomas Claiborne is one-third of one half - - -	2,340 14⅔

Signed duplicates. Errors excepted.

THOS. CLAIBORNE,
FRANCIS SMITH.

By an order of the Chancellor, at Wythe, the proceeds of Saltville and certain debts due at Saltville were placed in the hands of White, as receiver, for the purpose of paying the debts of the late William King; and the said White having permitted me to draw of those funds out the hands of Captain Smith, where they remained subject to the order of the said White, as receiver as aforesaid, the sum of $7,223; now these presents witness, that I, Alexander McCall, of the town of Nashville, Tennessee, do bind myself, my heirs, &c., to refund to the said White, receiver as aforesaid, the said sum and interest out of the interest of said McCall and wife in the proceeds of Saltville, in the event that the payment of the debts of said W. King make it necessary, or so much thereof as may be necessary to that object. Witness my hand and seal, this 16th day of October, 1826.

ALEXANDER McCALL.

We, the undersigned, not having been present when Alexander McCall executed the instrument of writing, of which the above is a copy, and being jointly interested according to the amount of our respective interests in the proceeds of Saltville, enjoined by the court at Wythe, now this is to bind ourselves, our heirs, executors, and administrators, for the several amounts of our interests enjoined as aforesaid, and receipted for to Colonel James White, as receiver as aforesaid, by Alexander McCall; and we are, by these presents, bound according to our several interests, in whatsoever responsibility rests on the said McCall, in consequence of executing the instrument aforesaid to Col. James White, as witness our hands and seals, this 18th day of July, 1827.

THOMAS CLAIBORNE, [SEAL.]
WILLIAM KING, [SEAL.]
THOMAS J. KING, [SEAL.]

And at May term, 1828, this day came the defendants, Peter J. Branch, and Rachael his wife, and Alexander McCall, and Mary Eliza his wife, by their counsel, and filed their answers, to which the plaintiffs replied gener-

119.

ally; and on the motion of Peter Mayo, guardian ad litem to the infan children of William Trigg, deceased, it is ordered, that Harold Smyth, the marshal of this court, be appointed guardian ad litem to the said children in the place of the said Peter Mayo.

The answers of Branch and McCall are as follows:

To the Honorable Allen Taylor, Chancellor of the Wythe district:

The answer of Peter J. Branch, who intermarried with Rachael, formerly the wife of William Trigg, deceased, and of said Rachael his wife, to the bill of complaint of James White and others, securities of James King and William Trigg, executors of the last will and testament of William King, deceased, exhibited in this honorable court against him and others, the representatives, heirs and devisees of William King, deceased.

These defendants, reserving to themselves all benefit of exception to the many errors and imperfections of said bill, answer and say:

That they do not admit the right of this honorable court to take from them, by this injunction, their share of the proceeds of Saltville, for the purposes in the complainants' bill mentioned, or otherwise; but they have also an interest in the personal estate of William King, and are, and always were, desirous that the debts of William King should be speedily paid. They have not, heretofore, resisted the application of their funds, composed of the proceeds of their real estate aforesaid, to that object; but they do not admit that those proceeds are equitable assets, and subject to be so applied.

They know little, of their own knowledge, as to the mismanagement of the legal assets, by the personal representatives of the said William King, but have always understood and believe, that the personal estate of said King was sufficient for the payment of his debts; and do not know, of their own knowledge, that it has been so wasted by the executor, as to make it necessary for the creditors to resort to the real estate for the payment of their debts, or to the plaintiffs, as securities of the executors. They are advised and contend that the object of the complainants has been attained; that the debts for which the fund has been provided by the injunction in this cause, have been paid, or a fund amply sufficient for their payment is thereby in the hands of the receiver; and knowing little of the transactions in the bill mentioned, they pray to be restored to their rights, and to be hence dismissed with their costs, &c.

ESTILL, *for defendants.*

WYTHE COUNTY, *to wit:*

Peter J. Branch this day made oath before me, a justice of the peace for said county, that the allegations in the foregoing answer, where made on his own knowledge, are true, and where made on the information of others, he believes them to be true.

Given under my hand this 28th day of May, 1828.

J. A. SANDERS.

To the Honorable Allen Taylor, Judge of the superior court of chancery, holden at Wythe court-house.

The answer of Alexander McCall, who hath intermarried with Rachel Mary Eliza, one of the children of James King, deceased, and of the said Rachel Mary Eliza his wife, to the bill of complaint exhibited against the representatives of James King and William Trigg, as executors of William

King, deceased. These respondents, for answer to so much of said bill as they are advised it is material for them to answer, they answer and say, that James King acted for a very short time as joint executor with William Trigg, of William King, having survived his brother William only about a year. During the period of James King's executorship, he could not have committed waste to any considerable amount, on the estate of William King; these respondents do not admit that James King committed any waste on said estate; as, however, an account is now on settlement, in another cause pending in this court, between the executors of L. L. Henderson, these respondents, and others, they refer to the settlement of that account.

These respondents are not advised of the amount of waste committed on said estate by William Trigg, in his lifetime, but think it is probable some waste was committed by him.

These respondents admit that L. L. Henderson, in his executorship, committed waste to a very large amount, on the estate of William King; they do not, however, admit that all the personal funds were wasted by the executors, or that the same has been exhausted by the creditors.

These respondents admit that L. L. Henderson, as the guardian of William Trigg's children, did, until restrained by this court, mismanage the profits of the real estate which came into his hands; they do not, however, admit that the representatives of James King ever mismanaged the profits of said real estate. The representatives of James King, particularly his children, have received a very small portion of the rents and profits of Saltville, they having paid a much larger portion of the debts of William King than the representatives of William Trigg; the representatives of William Trigg being now indebted to them, on that account, in the sum of more than $15,000.

These respondents neither admit nor deny the right of this court to restrain the profits of the saltworks from going into their hands. It however seems to them, that as neither they or any of the other representatives of James King have mismanaged said estate, they ought not to be deprived of their patrimony, without having committed a fault. Your respondents state, that supposing your respondents' interest at present, during Mrs. Smith's life, amount to two twenty-seventh parts of the whole saltworks. These respondents are advised that the funds of Saltville, to the present time, are vastly more than sufficient to pay all debts due from William King's estate.

They pray that the injunction heretofore awarded in this case, may be dissolved, and their rights protected by this court.

These respondents, having fully answered, pray to be hence dismissed with their costs, &c.

JOHNSON, *for defendants.*

VIRGINIA, WYTHE COUNTY, *to wit:*

This day Alexander McCall made oath before me, the undersigned justice of the peace for said county, that the statements contained in the foregoing answer, as far as they relate to facts within his own knowledge, are true, and that so far as they relate to facts within the knowledge of others, he believes them to be true.

Given under my hand this 28th May, 1828.

JOHN L. LINDENBERGER.

And on the same day James White, the receiver in this cause, this day made a report of his transactions, which is ordered to be filed. His report is as follows, viz:

To the Honorable Allen Taylor, Judge of the superior court of chancery, holden at Wythe court-house.

The undersigned, receiver of the profits of the saltworks, begs leave respectfully to report:

That it being considered probable that outstanding funds, composed of debts due to the saltworks, &c., which have accrued before September, 1824, would, when brought into activity, pay all the debts and legacies, the arrangements were made which are stated in the report to the May term, 1827. The undersigned has not collected any of these funds since that time. He has paid the following sums:

To General Alexander Smyth, counsel for Gamble and Wax, being the costs of two suits	159 34
To Benjamin Estill, as counsel for Gordon, Trokes, & Co., balance of debt	194 00
To Edward Campbell, as counsel for John Anderson, in discharge of a decree	464 89
To William Allen, a legatee	370 50
To Francis Preston, a creditor	1,107 96
	$2,296 69
To Benjamin Estill, Esq. counsel for Gamble & Co.'s creditors	138 50
To James E. Brown, clerk's tickets	59 37
To Harold Smyth, being money paid for taxes, &c.	52 00
To John P. Mathews, Esq. for services as commissioner	50 00

Since the last report made by the undersigned, he has been informed by Francis Smith, Esq., that the legatees of Charles S. Carson set up a claim of about twenty thousand dollars against the estate of William King, and that suit would be instituted to recover it. The undersigned has heard of no other new claim; all which is respectfully submitted.

JAMES WHITE.

And at the same term, this cause came on to be heard this fourth day of June, 1828, on the bill and exhibits; the reports of James White, the receiver of the rents and profits of the saltworks, heretofore filed in this cause; the reports of master commissioner Mathews; and sundry exceptions to said reports; and was argued by counsel. Whereupon, for reasons set forth in a written opinion of the court, filed among the papers in this cause, it is adjudged, ordered, and decreed, that the injunction heretofore awarded against Francis Smith, and the representatives of James King and William Trigg, to restrain the said Smith from paying, and the said defendants from receiving, any portion of the rents and profits of the saltworks, either then in the hand of said Smith, or which might accrue thereafter, until the further order of this court, be, and the same is, hereby accordingly dissolved. But the court retains the cause here, for distribution of the funds now in the hands of the receiver, and for other proceedings to be had hereafter therein.

And at October term, 1829, James White, the former receiver in this cause, presented in court a report of his proceedings, which was ordered to be filed. His report is as follows, viz:

To the Honorable Allen Taylor, Chancellor of the superior court of chancery, holden at Wythe court-house.

The undersigned, receiver of the profits of the saltworks, appointed by this honorable court, begs leave respectfully to state:

That since his last report, the following transactions have taken place, connected with his official duty. Among the debts due to the saltworks, placed under the control of the undersigned, was a debt due from Robert and William Dickson, of Fayetteville, Tennessee, evidenced by a note and an acceptance of a bill. Payment having been long delayed, the undersigned caused suits to be brought in the circuit court of the United States for West Tennessee; and after a very serious defence, as to the acceptance, judgments were obtained in both cases. Executions were issued by order of the undersigned, and levied, with other executions, to a large amount, obtained by other persons against the said firm, on a considerable quantity of property, real and personal. It was understood and unquestioned, that the firm of Robert and William Dickson was insolvent, though William Dickson, one of the members, was amply solvent, and was a man entitled to the utmost confidence. The said firm, as was understood, was largely indebted to him. Under these circumstances, the said William Dickson, who resides in Greene county, Tennessee, applied to the undersigned for indulgence, on the ground that a forced sale of the property taken in execution would cause a very great sacrifice, which he, individually, would have to bear. The undersigned thereupon agreed with him, that if he would pay the amount of the said judgments, one half in the month of October last, and the other in the month of May next, he would discharge the said executions. The said William Dickson, accordingly, in the month of October last, discharged the first instalment, by paying part money, and by giving a draft on Talbot Jones, of Baltimore, for the balance, which the undersigned, though the money has not yet been received, deems unquestionably good. This debt, in the whole, after paying charges, fees, commissions, &c., amounts to the sum of six thousand six hundred and dollars. Should this honorable court consider this transaction as a departure from his duty, the undersigned is willing to account for this amount out of his own funds.

The undersigned has, since the last report, paid to Joseph Trigg the balance of his legacy, amounting to about fifteen hundred dollars. He has also paid some officers' fees, the amount of which will be hereafter particularly shown. All which is respectfully submitted.

JAMES WHITE.

And at May term, 1829, James White, the receiver in this case, this day presented in court a report of his proceedings, which is ordered to be filed. His report is as follows, viz:

To the Honorable Allen Taylor, Judge of the superior court of chancery, holden at Wythe court-house.

The undersigned, receiver of the profits of the saltworks, &c., belonging to the estate of William King, respectfully reports:

That since his last report he has not collected any of the debts committed to his charge. The debt remaining due from William Dickson, as stated in his last report, will be paid in a short time; the undersigned having indulged him hitherto for the reasons formerly reported.

The undersigned has paid, since his last report, to Alexander Smyth, attorney for John McKim, as costs decreed to him, $97 71. All which is respectfully submitted.

JAMES WHITE.

May, 1829.

And at October term, 1829, James White, late receiver in this case, this day made a report of his proceedings, which was ordered to be filed. His report is as follows, viz:

To the Honorable Allen Taylor, Judge of the superior court of chancery, holden at Wythe court house.

The undersigned, who was appointed receiver by an order of this honorable court, in the case of White *vs.* Henderson, &c., in relation to the funds still under his control, begs leave to report:

That since the last term, he has received, on account of the funds committed to his care, the following sums:

From Robert and William Dickson, who were debtors, as mentioned in a former report - - - - - -	1,800 00
From Jacob Lyon - - - - - -	30 00
	1,830 00

And the undersigned has disbursed:

To Francis Preston, a creditor - - - - -	1,956 50
To amount of decree in favor of Abram Trigg, a legatee, about -	580 00
To James E. Brown, clerk - - - - -	61 31

All which is respectfully submitted.

JAMES WHITE.

November 2, 1829.

Receipts.

Received, June 13, 1819, of Francis Smith, pursuant to an order of the superior court of chancery, Wythe, made in May, 1819, in a cause William Trigg and James King's securities *vs.* L. L. Henderson and others, of the proceeds of the saltworks belonging to James King's representatives, three thousand five hundred and forty one dollars, in West Tennessee bank notes, which I am to appropriate as directed by said order of chancery. $3,541.

JAMES WHITE, *Receiver.*

Of the above money delivered Col. White, $270 was in Fayetteville notes; $140 Farmers' and Merchants' Bank of Nashville; and $82 Bridge Company of Augusta; the balance was in good Western Bank notes.

FRANCIS SMITH.

The above receipt, a copy from the original.

JAMES WHITE.

RECEIVED, October 27, 1819, of Francis Smith, of James King's proceeds of Saltville, pursuant to an order of the Chancellor at Wythe, to appropriate as the Chancellor had and might direct, the following notes of him, viz:

Names of debtors.	Dates of Notes.	When due.	Amount.	Interest charged from	Total amount of principal and interest.	
Francis Preston - - - -	4th Nov. 1815	On demand	$3,400 00	4th Nov. 1515	$4,211 75	
Pleasant Smith and Samuel Fryar - -	12th May, 1819	12th Nov. 1819	400 00	12th May, 1819	411 00	Payable in N. and S. Carolina, and Georgia notes.
Earl B. Clapp - - - -	11th June, 1819	1st Oct. 1819	1,500 00	11th June, 1819	1,533 75	Payable in current bank notes.
Earl B. Clapp - - - -	23d May, 1819	23d May, 1820	1,462 00	23d May, 1819	1,497 46	Rogersville, Knoxville, Jonesboro'.
H. D. Poston and Benjamin McCartee -	25th Jan. 1819	28th Jan. 1819	500 00	25th Jan. 1819	522 66	Payable in current bank notes.
H. D. Poston and Thomas Tate, jr. - -	20th June, 1819	23d Jan. 1819	1,000 00	20th Jan. 1819	1,046 12	Do.
John M. Preston & Co. - - -	6th Feb'ry, 1818	6th Feb'ry, 1819	1,315 50	6th Feb'ry, 1818	1,451 46	
L. L. Henderson, M. Beatty, and Abram Trigg	2d Feb'ry, 1819	15th Aug. 1819	1,500 00	2d Feb'ry, 1819	1,566 00	
Robert R. Preston & Co. - - -	22d May, 1819	1st Nov. 1819	3,000 00	22d May, 1819	3,077 40	Payable in Southern paper.
Jos. Bell, Stephen Sanders, and John Sanders	30th Oct. 1818	2d Nov. 1818	1,000 00	30th Oct. 1818	1,059 32	
William Tate - - - - -	15th April, 1819	On demand	200 00	18th April, 1819	206 58	Payable in N. and S. Carolina notes, or money equal to it.
Jacob Lyon - - - - -	10th Dec. 1818	13th Dec. 1818	275 00	6th July, 1818	289 50	
R. G. Cummings, D. & H. Campbell -	6th Aug. 1818	6th July, 1819	4,000 00	6th July, 1818	4,313 84	
			$19,552 50		$21,186 34	

JAMES WHITE.

128

Also, received the following moneys, viz:

What kind.	Amount.
Lancaster, Ohio bank	$5 00
Farmers' and mechanics' bank of Cincinnati	10 00
Union bank of Georgetown	1 00
Valley bank of Virginia	40 00
Bank of the State of Tennessee, payable at Jonesboro'	136 00
Bank of the State of Tennessee, western banks	258 00
	450 00
Fayetteville T. bank	170 00
Franklin T. bank	70 00
Nashville and branches	276 00
P. and M. bank Huntsville	168 00
Cape Fear	155 00
Newbern	133 00
State bank North Carolina	295 00
	1,707 00
South Carolina	10 00
F. and M. bank South Carolina	15 00
State bank of South Carolina	57 00
State bank of Georgia	50 00
Bank of Augusta	105 00
Silver	688 50
	$2,699 50

JAMES WHITE.

Received, September 1st, 1820, of Francis Smith, of James King's interest in Saltville, to appropriate as the Chancellor has or may direct, the following moneys, viz:

$10,000 00 (Ten thousand dollars) for rent, par money.
2,572 62 (Two thousand five hundred and seventy two dollars sixty-two cents) for stock sold J. and W. Sanders, par money.
724 44 (Seven hundred and twenty-four dollars and forty four cents) North Carolina money.
288 60 (Two hundred and eighty-eight dollars and sixty cents) *foreign* gold.
2 50 (Two dollars and fifty cents) silver.
50 00 (Fifty dollars) State bank of Tennessee, payable at Knoxville.
3,082 55 (Three thousand eighty two dollars and fifty five cents) State bank of Tennessee, payable at Jonesborough, and western banks.
5,419 92 (Five thousand four hundred and nineteen dollars and ninety-two cents) Nashville.
$22,140 63 In all twenty-two thousand one hundred and forty dollars sixty-three cents.

JAMES WHITE.

Received, September 1st, 1820, of Francis Smith, of William Trigg's interest in Saltville, to be appropriated as the Chancellor has or may direct, the following moneys, viz:

$10,000	00	(Ten thousand dollars) for rent, par money.
2,572	62	(Two thousand five hundred and seventy-two dollars and sixty-two cents) for stock sold J. & W. Sanders, par money.
724	44	(Seven hundred and twenty-four dollars and forty-four cents) North Carolina money.
5	00	(Five dollars) Virginia money.
5	00	(Five dollars) Valley Bank of Virginia.
25	00	(Twenty-five dollars) State Bank of Tennessee, payable at Knoxville.
60	00	(Sixty dollars) State Bank of Tennessee, payable at Jonesborough, and western banks.
620	00	(Six hundred and twenty dollars) Nashville.
14,012	06	In all fourteen thousand and twelve dollars and six cents.

JAMES WHITE.

Received, November 27th, 1820, of Francis Smith, of James King's and William Trigg's interest in Saltville, to appropriate as the Chancellor has or may direct, two drafts on Stephen S. Ewing, of Huntsville, Alabama; one dated the 6th of November, and payable on or before the 15th February next, for three thousand four hundred dollars; the other dated this day, and payable on or before the first day of March next, for one thousand dollars; in all four thousand four hundred dollars, which is expected to be paid in Tennessee money. $4,400.

JAMES WHITE.

Received, September 1st, 1821, of Francis Smith, of James King and William Trigg's interest in Saltville, to be appropriated as the Chancellor has or may direct, twenty thousand dollars, par money, being the rent of Saltville due James King and William Trigg for the year ending the 31st of August, 1821; also, three hundred dollars, par money, being the interest on ten thousand of the said $20,000 six months, say from the first of March to the first of September, 1821; also, received one thousand three hundred and forty dollars and sixty-five cents, money of the State Bank of Tennessee, payable at the western branches.

JAMES WHITE.

$20,000	00	Rent.
300	00	Interest.
1,340	65	Tennessee.
$21,164	65	

Received, September 1st, 1822, of Francis Smith, of James King and William Trigg's interest in Saltville, to appropriate as the Chancellor has or may direct, twenty thousand dollars, par money, being the rent of Saltville due J. King and W. Trigg, for the year ending the 31st of August, 1822; also received three hundred dollars, par money, being the interest of

ten thousand of the said twenty thousand six months, say from the first of March, to the first of September, 1822.

JAMES WHITE.

$20,000 Rent.
300 Interest.

$20,300

A copy. Teste,
A. FINDLAY.

Received, September 1st, 1823, of Francis Smith, of James King's and William Trigg's interest in Saltville, to appropriate as the Chancellor has or may direct, twenty thousand dollars, par money, being the rent of Saltville due James King and William Trigg, for the year ending 31st August, 1823, inclusive; also, received three hundred dollars, par money, being the interest of ten thousand of the said twenty thousand dollars six months, say from the 1st March, 1823, to 1st September, 1823.

JAMES WHITE.

A copy. Teste,
A. FINDLAY.

Drawer's names.	To whom payable.	Date.	Interest due from	Amt. note.	Payments.	Interest.	Prin. and int. due 3 Nov 1823.	How payable.
William Brown	Francis Smith, for salt	14 May, 1821	1 June, 1820	$1,558 63	1822. Feb. 12. Cash, $1,425 00	$195 69	$559 32	Par money.
William Campbell	Frs. Smith, for Saltville	17 " 1821	1 May, 1820	695 95	1823. Feb. 1. Do 250 00 Nov. 1. Do 20 00	137 28	533 23	Par money.
John Campbell	Francis Smith	22 July, 1822	23 July, 1822	518 90	- - - -	39 77	558 67	Par money.
R. & W. Dickson	Francis Smith	26 July, 1821	26 Dec. 1821	8,814 00	- - - -	980 55	9,794 55	Par money.
Richard Haslerig	F. Smith, for salt	14 May, 1821	24 May, 1821	774 36	1822. June 24. Do 120 00 1823. Jan. 21. Do 143 00 Feb 26 Do 205 06	89 71	396 01	Ten. money.
Haslerig & Berry	Thompson & Colly	12 June, 1819	10 Mar. 1820	562 00	1820. Mar. 19. Do 20 00 Oct. 10. Do 150 00 " 15. Do 10 00 1821. June 4 Do 50 00 " 16. Do 100 00 1822. Jan. 24. Do 5 00 Feb. 24. Do 33 00 1823. Jan. 21. Do 57 00 Feb. 26. Do 49 00 April 3. Do 10 00	55 95	113 75	Ten. money.
Frs. Smith's draft on White, Reed, & Hardie	James White	3 Nov. 1823	29 July, 1823	85 00	- - - -	-	85 00	Ten. money.
White, Reed, & Hardie	Francis Smith	29 June, 1823	29 July, 1823	105 00	- - - -	-	105 00	Ten. money.
Samuel B. Mead	William Scott	10 May, 1821	10 Feb. 1822	55 89	1823. March 1. Do 20 00	5 10	40 90	Ten. money.
William Jennings	Frs. Smith, for Saltville	25 Dec. 1819	25 Dec. 1819	55 00	- - - -	12 70	67 70	Ten. money.
William Jennings	S. Henderson & Co.	13 May, 1819	16 May, 1819	204 80	- - - -	54 73	259 53	Ten. money.
R. & W. Dickson, draft on Joseph Fowler, jr. of New Orleans, in favor of Alexander Findlay, dated 19th March, 1823, for 22,207 lbs. cotton, the draft having been protested; cotton estimated at 9 cents per pound; equal to - - - - - - - - - -						1,998 63		
Interest on same from 19th March, to 3d Nov. 1823 - - - - - -						74 94	2,076 57	Par money.
Amount paid notary's fees for protest - - - - - - - -						3 00		
							$14,390 32	

Received, under my authority from the superior court of chancery at Wythe, the above notes, &c. of Francis Smith, amounting in principal and interest, exclusive of credits, to fourteen thousand three hundred and ninety dollars and thirty-two cents, which I have this day required said Smith to deliver me as necessary to pay the debts and legacies of William King, deceased, being the proceeds of Saltville.

JAMES WHITE.

Teste, ALEX'R FINDLAY.
A copy. Teste,
ALEX'R FINDLAY.

Received, September 1st, 1824, of Francis Smith, of James King's and William Trigg's interest in Saltville, to appropriate as the Chancellor has or may direct, twenty thousand dollars, par money, being the rent of Saltville due James King and William Trigg, for the year ending 31st August, 1824, inclusive.

JAMES WHITE.

A copy. Teste,
ALEX'R FINDLAY.

[EXHIBITS.]

VIRGINIA:

At a superior court of law continued and held for Washington county, the 10th day of November, 1819:

Due proof having been adduced to the court, that the order made on the fourth day of the present term, requiring Lilburn L. Henderson, executor of William Trigg, deceased, who was surviving executor of William King, deceased, to relieve and indemnify William Mays, William Palmer, and Thomas McChesney, securities of the said Lilburn L. Henderson as executor aforesaid, has been legally served upon him, and the said Lilburn L. Henderson having been solemnly called, and failing to appear or to shew cause against this motion, it is considered by the court, on the motion of the before named securities, that all power and authority of the said Lilburn L. Henderson over the estate of William Trigg, deceased, and over the estate of William King, deceased, be revoked and annulled, and the same are hereby revoked and annulled. And Francis Smith who hath intermarried with Mary, late the widow of William King, deceased, appearing in court and renouncing all claim to the administration of the estate of the said William King, deceased, and no other relative nor creditor of the said William King, deceased, nor of the said William Trigg, deceased, appearing or setting up any right to the administration of his estate, the court doth order that he, the said Lilburn L. Henderson, deliver up all the unadministered estate of his testator, William Trigg, deceased, and the unadministered estate of William King, deceased, to James White, sheriff of Washington county, to whom the said estates are hereby committed, and who in the management thereof is to govern himself according to law.

A copy. Teste,

D. CAMPBELL, *D. C.*

I, James King, of Washington county, and State of Virginia, being weak in body, but of perfect mind and memory, knowing the uncertainty of life, do make and declare this to be my last will and testament.

1st. I direct that all my just debts be punctually paid.

2d. Whereas my deceased brother William King, by his last will and testament, directed that during the lifetime of his widow, she, William Trigg, and myself, should carry on his business in copartnership, both saltworks and merchandising, each equal shares; and the said Mary King having declined any share or concern in the mercantile business, William Trigg and myself entered into a partnership agreement, by which we are bound to carry on the mercantile business during the life of said Mary King, for our mutual benefit; and doubts having been suggested as to the disposal of said mercantile capital by the will of my said brother William King, deceased, we agreed and covenanted that if it should be decided that we took an absolute estate in the said capital, we would carry on the business as directed by the will; but if the use only of the capital was given to us during the life of Mary King, we would then carry on mercantile business on our own accounts, with our own capitals, for each other's mutual benefit. In pursuance of our agreement, and of my intention, I hereby direct that C. S. Carson, my executor, in conjunction with the said William Trigg, carry on the mercantile business as above directed; and that, as a compensation to my said executor for so doing, he receive one-half of the profits which would have fallen to my share, the other half to be divided as hereafter directed.

3d. I will and bequeath unto my wife, Sarah King, my house and lot in the town of Nashville, and State of Tennessee, now occupied by Alexander Richardson, known and designated in the plan of said town of Nashville by the number sixty-seven, with its appurtenances; also, the following slaves, viz: one negro woman named Hannah, one boy named Samuel, and one named Joe, in the said town of Nashville, one negro girl named Mary, and one boy named Alexander, in my possession, for and during her natural life. Also, I will and bequeath to my said wife all my household and kitchen furniture, one horse named Tom, and my small carriage, with harness complete for two horses, to her and her heirs for ever.

4th. I will and bequeath to my said wife Sarah two thousand dollars, being what I suppose would be her proportion of the profits of my mercantile business since the 13th day of October, 1808; also, one-third part of a debt due to me from the firm at Nashville, Tennessee, of Trigg, Richardson & Co., for the business of King, Carson & King, to her and her heirs for ever, to be paid when the estate of William King, deceased, is fully adjusted by the executors, and his debts paid.

5th. It is my will and intention, and I hereby direct, that, as far as my estate is interested, the saltworks be carried on according to an agreement entered into between Mary King, William Trigg, and myself; that my part be under the direction of my executor during the life of Mary King; and that my portion of the proceeds of the said works be annually, during the life of Mary King, divided as follows: one-third to my wife Sarah, one-third to Charles S. Carson, my executor, as a compensation for his trouble in attending to the interests of said works and executing my will, and the other third to be equally divided among my three children, William, Thomas, and Rachel Mary Eliza.

6th. Should the real estate of my brother William not pass by the devise in his will, but descend to the heirs at law, then should my wife outlive Mary King, widow of said William, I hereby bequeath to her one-third of the profits of my portion of the saltworks during her natural life.

7th. Should the real estate of my brother William pass by the devise in

his will to my son William, then it is my will and intention that my said son William receive or take no part of my estate; but that the same, both real and personal, be equally divided between my other two children, Thomas and Rachel Mary Eliza. But should he not take the said real estate by the said devise, then I will and bequeath all my real and personal estate which I now possess, or which may descend to me from my brother William, by devise or otherwise, (except what I have herein before disposed of,) to my said three children, William, Thomas, and Rachel Mary Eliza, and to their heirs for ever.

8th. It is my will and direction that my children be well educated, let it cost what sum it may, after the payment of my debts.

9th. And lastly, I do hereby constitute and appoint my trusty, faithful friend, Charles Stewart Carson, my sole executor of this my last will and testament, well knowing his attachment to myself and family, and that he will act towards them the part of a friend; and I do hereby direct that he be not required to give security in taking probate of this my last will and testament, for the faithful execution of the same, as I have the utmost confidence in him. I also direct that no public sale be made of any part of my estate; but when it may be necessary for the payment of my debts, or otherwise, the same be sold by *my* executor, he having regard to specific legacies.

In witness whereof, I have hereunto subscribed my name, and affixed my seal, this twenty-first day of October, in the year of our Lord one thousand eight hundred and nine. (1809.)

J. KING, [L. S.]

Signed, sealed, published, and declared by James King, as his last will and testament, in the presence of us, who subscribed our names thereto as witnesses, in his presence and at his request.

D. CAMPBELL,
WILLIAM TRIGG.

$7,589 87½, payable on demand.

On demand, I bind myself, my heirs, &c., to pay unto the executors of William King, deceased, the sum of seven thousand five hundred and eighty-nine dollars and 87½ cents, with interest on $6,868 66½ cents only, from this time; the other, say $721 21, being interest that accrued last year, no interest is now required, for value received. Witness my hand and seal, in Abingdon, Va., this 7th day of February, 1810.

LEWIS HARMAN, [L. S.]

Teste, JAMES SHELBY.

Endorsed.

1810.	August 2.	Received on account of the within, cash -	$100
	Dec. 10.	By cash paid Jones & Young in Baltimore, 17th ult.	1,000
1811.	Oct. 12.	By cash paid in Abingdon - - -	1,000
Feb. 21, 1814.		Received $982 14, collected from Wm. P. Anderson.	

I, as executor of William King, deceased, assign the within note to Alexander Fulton, for value received, and agree to be responsible to him as executor, &c., and in no other character whatever, should the obligor prove insolvent after due diligence shall have been used by the assignee.

WILLIAM TRIGG,
Surviving executor of Wm. King, dec'd.

Debt		$7,589 87½
Interest, 5,26 days on $6,868 66½		203 78½
	7,793 66	
By cash	100 00	
	7,693 66	
Interest on $6,868 66½ 3,15	120 19	
	7,813 85	
By cash	1,000 00	
	6,813 85	
Interest to 12 Oct. 1811. 10 mo's 26 ds.	366 00	
	7,179 85	
Paid	1,000 00	
	6,179 85	
From 12 Oct., 1811, to 21 Feb'y, 1814	874 43	
	7,054 28	
Paid	982 14	
	6,072 14	
Interest to 2d Nov., 1814. 8 mo's 9 ds.	252 00	
	6,324 14	
Paid	1,000 00	
	5,324 14	
Interest to 4th March, 1815	106 48	
	5,430 62	
Paid	202 00	
	5,228 62	
Interest to 22d May, 1817	702 38	
	5,931 00	

This is the last suit brought by Fulton *vs.* King's executors, and this the bond on which it was brought. The calculation in figures is the manner in which the jury came to their verdict of $5,931, for which sum the judgment is given.

Harman took the oath of insolvency, in Tennessee, under an execution for this debt. This fact I know.

F. SMITH.

14*th February*, 1828.

Pleas at the capitol, in the city of Richmond, before the court of the United States for the fifth circuit and Virginia district, on the fifth day of June, one thousand eight hundred and nineteen.

Be it remembered, that heretofore, to wit, on the twenty-second day of February, in the year aforesaid, came into the clerk's office of the said court Alexander and James Fulton, by their attorney, and sued out a writ of capias ad respondendum against Lilburn L. Henderson, executor of William Trigg, who was executor of William King, deceased, which writ, with the endorsement and acknowledgment of service thereon, is in the words following, to wit:

The President of the United States of America to the Marshal of Virginia district, greeting:

You are hereby commanded to take Lilburn L. Henderson, a citizen and inhabitant of the State of Virginia, executor of William Trigg, who was executor of William King, deceased, if he be found within your district, and him safely keep, so that you have his body before the judges of the court of the United States for the fifth circuit, in the Virginia district, at the city of Richmond, on the seventh day of April next, to answer Alexander and James Fulton, citizens and inhabitants of the State of Maryland, of a plea of debt for $5,846 78 cents, with interest from the first of September, 1801, till paid; and have then there this writ. Witness John Marshall, Esq., Chief Justice of the United States, at Richmond, this 22d day of February, one thousand eight hundred and nineteen, and in the forty-third year of the independence of the United States of America.

RD. JEFFRIES, *Clerk.* [L. s.]

Endorsement.—For money due by bond under seal; no bail required.

NICHOLAS, *P. Q.*

And at another day, to wit, at rules held in the clerk's office aforesaid, in the month of April, in the year aforesaid, came the said Alexander and James Fulton, by their attorney, and filed their declaration against the said Lilburn L. Henderson, executor as aforesaid, in these words, to wit:

UNITED STATES' 5TH JUDICIAL CIRCUIT, DISTRICT OF VIRGINIA, *to wit:*

Alexander and James Fulton, citizens and inhabitants of the State of Maryland, merchants and partners, trading under the firm of Alexander & James Fulton, plaintiffs, complain of Lilburn L. Henderson, a citizen and inhabitant of the State of Virginia, executor of William Trigg, deceased, formerly a citizen of the said State of Virginia, and which said William Trigg was surviving executor of William King, deceased, who was also, in his lifetime, a citizen and inhabitant of the said State of Virginia, defendant in custody, &c., of a plea that the said defendant render unto the said plaintiff five thousand eight hundred and forty-six dollars 78 cents, with lawful interest from the first of September, 1801, which from said plaintiffs said defendant unjustly detains, for that, to wit, that the said William King did, in his lifetime, to wit, on the said first day of September, 1801, in the said district of Virginia, (and within the jurisdiction of this honorable court, holden in said circuit and district as aforesaid,) by his certain writing obligatory, sealed with his seal, and to the court now here shewn, the date whereof is on the same day and year aforesaid, promise to pay to said plaintiffs, under the name and style of Messrs. Alexander & James Fulton,

merchants, Baltimore, or to their order, thirty months after the date of said writing obligatory, (that is to say, the said first day of September, 1801,) with lawful interest from said date, the aforesaid sum of five thousand eight hundred and forty-six dollars 78 cents, for value received; nevertheless the said William King, in his lifetime, or the said William Trigg, his surviving executor, in his lifetime, or the said defendant, since the death of the said William Trigg, though each of them was thereto specially requested, have not paid the said sum of five thousand eight hundred and forty-six dollars 78 cents, with lawful interest from the date of said writing obligatory, according to its tenor and effect, but the same to the said plaintiffs to pay hitherto have denied and failed to pay, and said defendant doth still fail and deny to pay, and from said plaintiffs doth detain, to the damage of the plaintiffs dollars, whereupon they sue, &c. &c.

NICHOLAS, *P. Q.*

JOHN DOE
&
RICH'D ROE } *Pledges to prosecute.*

And the defendant being arrested and not appearing, on the motion of the plaintiffs, by their attorney, it was ordered that judgment be entered for the plaintiffs against the defendant, for the debt and interest in the declaration mentioned, and costs, unless the defendant should appear and plead to issue at the then next rules.

And at another day, to wit, at rules held in the clerk's office aforesaid, in the month of May, in the year aforesaid, the defendant still failing to appear, on the motion of the plaintiffs it was ordered, that the last order made against him in this cause be confirmed.

And now at this day, to wit, the day and year first herein mentioned, came the plaintiffs, by their attorney, and the defendant still failing to appear, on the motion of the plaintiffs, it is considered that they recover against the defendant five thousand eight hundred and forty-six dollars seventy-eight cents, with interest thereon, to be computed after the rate of six per centum per annum, from the first day of March, one thousand eight hundred and four, until payment, the debt in the declaration mentioned, and their costs by them about their suit in this behalf expended; to be levied of the goods and chattels of the said William King, deceased, in the hands of the defendant to be administered, if so much thereof he hath, but if not, then the costs to be levied of the goods and chattels of the said William Trigg, deceased, in the hands of the defendant also to be administered, if so much thereof he hath, but if not, then the costs to be levied of the defendant's proper goods and chattels. And the defendant in mercy, &c.

Plaintiffs' costs, $27 34.

Note on which the suit was brought.

$5,846 78.

Thirty months after date I promise to pay, or cause to be paid, to Messrs. Alexander and James Fulton, merchants, Baltimore, or order, five thousand eight hundred and forty-six dollars and seventy-eight cents, with lawful interest from the date until paid, for value received; as witness my hand and seal. Abingdon, Virginia, 1st September, one thousand eight hundred and one.

WILLIAM KING, [L. S.]

G. HALE,
M. GLEN.

137.

Endorsement.—March, 3d, 1802.
ALEXANER & JAMES FULTON.
ALEXANDER FULTON.

A paper, of which the following is a copy, is with the papers in the suit, to wit:

1801. Sept. 1st. Note on demand - - - -	$5,846 78	
Interest to December 20th, 1803; 2 years, 2 months, 20 days	779 99	
	6,626 77	
By cash - - - - - - - -	824 60	
	5,802 17	
Interest to December, 12th, 1804; 12 months, 22 days -	341 13	
	6,143 30	
By cash - - - - - - - -	2,500 00	
	3,643 30	
Interest to February 26, 1805; 2 months and 14 days -	44 22	
	3,687 52	
By cash - - - - - - - -	272 00	
	3,416 52	
Interest to January 13, 1806; 10 months, 15 days - -	163 00	
	3,579 52	
By cash - - - - - - - -	1,522 15	
	2,057 37	
Interest to 22d May, 1819; 13 years, 4 months, 9 days -	1,666 88	
	$3,724 25	

I, Richard Jeffries, clerk of the court of the United States, for the fifth circuit and eastern district of Virginia, do hereby certify, that the foregoing is a true transcript of the record and proceedings in a certain action of debt lately depending in the said court, between Alexander and James Fulton, plaintiffs, and Lilburn L. Henderson, executor of William Trigg, deceased, who was executor of William King, deceased, defendant, with all things touching the same, as fully and wholly as they now exist among the records of my office.

In testimony whereof, I hereto set my hand and affix the seal of the said court, this nineteenth day of July, one thousand eight hundred and twenty-eight.

No seal affixed.

RD. JEFFRIES.

Received, October 30th, 1815, of Lilburn L. Henderson, executor of William Trigg, and Andrew Russell and Francis Smith, executors of Charles S. Carson, executor of James King, six thousand dollars out of the net proceeds of the saltworks, being on account of legacies left my wife Elizabeth, daughter of John Mitchell, Esq., by the last will and testament of William King.

WM. HEISKELL.

Teste, Wm. M. Helms.

A copy. Teste,

Alexander Findlay.

By an order of the Chancellor at Wythe, the proceeds of Saltville and certain debts due at Saltville, were placed in the hands of Col. James White as receiver, for the purpose of paying the debts of the late William King, and the said White having permitted me to draw out of the hands of Capt. Francis Smith, in whose hands a part of those funds remain, subject to said White's order, as receiver, the sum of seven thousand two hundred and twenty-three dollars:

Now these presents witness. that I, Peter J. Branch, of the town of Abingdon, for myself and wife, and as guardian of William Trigg's children, all of whom are under age, do bind myself and them to refund to said White, receiver, as aforesaid, the said sum and interest, in the event that the payment of the debts of the late William King make it necessary, or as much as may be necessary to that object, to be refunded to said White out of the interest of said Branch and wife, and William Trigg's children, in the proceeds of Saltville, being one-third thereof. Witness my hand and seal, this 10th day of October, 1826.

PETER J. BRANCH, [L. S.]

Teste, John D. Mitchel,
B. Estill.

By an order of the Chancellor at Wythe, the proceeds of Saltville and certain debts due at Saltville, were placed in the hands of Col. James White, as receiver, for the purpose of paying the debts of the late William King, and the said White having permitted me to draw of these funds out of the hands of Capt. Francis Smith, where they remained subject to the order of said White, as receiver, aforesaid, the sum of seven thousand two hundred and twenty-three dollars:

Now these presents witness, that I, Alexander McCall, of the town of Nashville, Tennessee, do bind myself, my heirs, &c., to refund to said White, receiver, as aforesaid, the said sum and interest, out of the interest of said McCall and wife in the proceeds of Saltville, in the event that the payment of the debts of said William King make it necessary, or so much thereof as may be necessary to that object. Witness my hand and seal, this 16th day of October, 1826.

ALEXANDER McCALL, [L. S.]

Teste, B. Estill,
P. J. Branch.

A copy. Teste,
J. E. Brown, *C. C.*

138.

[DEPOSITIONS.]

COMMISSIONER'S OFFICE, *Wythe C. H., Va., May* 23, 1826.

JAMES WHITE, *et al.*, plaintiffs,
against
LILBURN L. HENDERSON, executor of Wm. Trigg, and others, defendants.
} *On an account referred.*

The deposition of Alexander Findlay, a witness introduced on behalf of the representatives of William Trigg and James King, who being of lawful age, and first duly sworn, deposeth and saith:

That a note on Stephen S. Ewing was left by the deponent in Huntsville, after receiving a part of said note in par money from S. Ewing, to be received by Col. James White and collected from said Ewing, to pay a note executed by Lilburn L. Henderson, Martin Beatty, and Abram T. Trigg, which is included in a receipt executed by Col. White on the 27th of October, 1819, for sundry obligations for money due the saltworks. At the time of leaving the note on Ewing, the deponent had a conversation with said Ewing, who spoke of his intention to pay Col. White in Tennessee money. The deponent observed to him that he must pay good money if required, the note being payable in good money; that if he satisfied Col. White he supposed it was all that was necessary; but there must be no difficulty on the subject: said Ewing agreed thereto. The deponent returned to Huntsville a short time afterwards, and understood from Ewing that he had paid Col. White the amount of the note in Tennessee paper, which was not objected to by said White. This deponent does not know that Col. White was informed that par money would have been paid by Ewing if he had insisted on obtaining such, though the note did not specify that any other than par money would be received. The deponent is satisfied that said Ewing was and is entirely solvent, and able to pay a claim equal in amount to the bond before mentioned. And further this deponent saith not.

ALEX. FINDLAY.

Sworn to and subscribed before me, the day and year above mentioned.

J. P. MATHEWS, *M. C.*

Being requested to state what was my understanding in regard to certain depreciated funds belonging to James King's and William Trigg's estates, enjoined in my hands by order of the superior court of chancery at Wythe, and which funds were handed over by me to James White, receiver, I depose and say, that, from information I had received, I did believe that said receiver had agreed to turn such depreciated paper into good funds, on condition that he should be suffered to retain the same without being charged interest, for a period sufficient to make an investment in cotton or produce in the western market.

It is my opinion said funds should have been loaned on satisfactory security, payable in one year in par funds, and recollect to have understood from E. Campbell, counsel for James King's heirs, that he would undertake to have them so disposed of.

And on further request, I say that I did, on behalf of William Trigg's representatives, employ D. Sheffey to attend to their interests in any legal controversy that might arise, for which a fee of one thousand dollars was given, said Sheffey excepting, however, the case of the injunction on the

proceeds of their interest in Saltville, in which case he appeared for the securities against them.

In regard to a note due by Stephen Ewing, of Huntsville, and which passed into the hands of the receiver, I am satisfied that the same was payable in dollars, and having been executed for debt payable in par money, there ought to have been no hesitation on the part of Mr. S. Ewing to pay in par funds. In part of debt due by S. Ewing par funds were received by my agent, A. Findlay. I believe that said Ewing was then, and suppose him now, to be perfectly solvent. When I transferred the funds to Col. White, under the order of the Chancellor, I made no agreement with him of any kind, having no power to make any. What I understood took place at the chancery court, I heard from Mr. Granville Henderson, who is dead, and Mr. Edward Campbell, the latter gentleman having told me that he was authorized by Major Thomas Claiborne to say he would take the Tennessee funds on the condition aforesaid, if Col. White would not. Col. White's receipt to me shews in what currency the notes were payable.

The Messrs. Sanders rented Saltville, agreeing to pay semi-annually; but when the first half year was due this affiant did not charge interest on it, having seen the faithful exertions of said Sanders to pay the same, and his inability to do so, to press him then might jeopardize the continuance of the lease. I therefore surrendered my right to interest; Col. White purchased the lease of the Messrs. Sanders for seventy thousand three hundred and thirty-three dollars. I believe I assumed all the Sanders' responsibility to the lessees of the works; and further say not.

FRANCIS SMITH.

Signed and sworn to before me, this 3d of December, 1827, in presence of both parties.

JOSEPH C. TRIGG.

STATE OF TENNESSEE, *Knox county:*

I, Luke Lea, cashier of the Bank of the State of Tennessee, at Knoxville, being duly qualified, deposeth and saith: That on the 28th day of July, 1819, the President and Directors of this bank resolved, that it was advisable, in ordinary cases, that her branches should go on, and make specie payments as they had previously done, but if large demands for specie were made upon them that they might suspend the payment thereof; that so far as this deponent knows, the several branches conformed to the instructions of the principal bank; that the principal bank at this place, except from the 26th day of July, 1815, to the 20th April, 1817, always promptly discharged *all* demands against it; and even during that period, the bank was in the practice of accommodating, generally, with change all those who applied. This deponent has been advised, and believes, that the branch bank at Nashville suspended the payment of specie a short time previous to the 28th day of July, 1819, and that the Nashville Bank and its branches suspended the payment of specie a very few days previous thereto.

This deponent further states, that the branch bank at Jonesborough, Franklin, Carthage, Columbia and Clarksville, resumed the payment of specie in April, 1824, and has continued to pay specie to this day, as this deponent believes. That the branch bank at Nashville resumed the payment of specie in 1826, at or near the time at which the Nashville Bank commenced specie payments. That this deponent cannot say with certainty any thing respecting the branch of the Nashville Bank, at Rogersville,

but does verily believe that the branch at Rogersville did redeem its notes with specie, when neither the principal bank at Nashville, or any of her sister branches did; and further, that said branch at Rogersville still continues to pay specie for her notes, as he is informed. This deponent thinks it possible that he may in some instances be incorrect as to dates, but thinks he is in the main correct.

LUKE LEA.

Sworn to and subscribed before me, this 2d day of February, 1828.

JAMES PARK,
A Justice of the Peace, Knox county.

STATE OF TENNESSE, *Knox county.*

I, Charles McClung, clerk of the court of pleas and quarter sessions for the county of Knox and State aforesaid, by my deputy, William Swan, certify that James Park, before whom the foregoing affidavit was made, by Luke Lea, on this day, is an acting justice of the peace in and for said county, duly commissioned and sworn.

Given under my hand and seal of office, at office, the 2d day of February, A. D. 1828.

CHAS. McCLUNG,
By his deputy William Swan.

I, Robert Houston, chairman of the court of pleas and quarter sessions for the county of Knox, in the State of Tennessee, certify that Charles McClung is clerk of said court, that William Swan is his deputy, and that the foregoing certificate of the clerk is in due form of law.

Given under my hand this 2d day of February, 1828.

R. HOUSTON.

WHITE
vs.
HENDERSON'S EXECUTORS
and others.

This day Daniel B. Turner, of Huntsville, Alabama, personally appeared before me, James G. Carroll, justice of the peace for Madison county, State of Alabama, and made oath that he has been well acquainted with circumstances of Brice M. Garner for the last nine years, and that he is satisfied that during the years 1819, 1820, 1821, and 1822, that any sum amounting to no more than three thousand five hundred dollars, could have been readily made by law, by prosecuting a suit in this State; during those years he held an extensive and valuable property, which he sold about 1822 and first of 1823; a part of this property Colonel James White, of Abingdon, bought. Affiant further states, that in the latter end of 1823, he began to be esteemed doubtful, and about 1824, as well as I recollect, he took the insolvent debtor's oath. Since the year 1825, I am satisfied nothing could have been made of him by law or otherwise. Affiant knew well Benjamin Patterson, Esq. and believes, from his former mercantile relations with said Garner, that he was and is well acquainted with his situation, and that said Patterson stands unimpeached as a man of integrity and character.

DANIEL B. TURNER.

Sworn and subscribed before me, this 10th September, 1828.

J. G. CARROLL, *J. P.*

WHITE
vs.
HENDERSON'S EXECUTORS
and others.

Personally appeared before me, William Barker, a justice of the peace for Madison county, and State of Alabama, Benjamin Patterson, merchant, of Huntsville, in said county, who makes oath that he has been acquainted with Brice M. Garner, of Fayetteville, Tennessee, for the last ten years, and has had a general acquaintance with his circumstances during that period, and that said Garner was solvent during the years 1819, 1820, and 1821, and was well able to pay three thousand five hundred dollars and more. Affiant further states, that in the early part of 1821, this affiant was a partner in trade with said Garner, and as such was jointly interested in a house and lot in Huntsville aforesaid, which said Garner, with the sanction of said affiant, sold to Col. James White, of Abingdon, Virginia, for nine thousand dollars. Affiant further states, that said Garner was owner of other valuable real estate in Alabama, to wit: Ditto's Landing, sold to said White by him, and Brown's Ferry, which sold, as this affiant is informed and believes, for some thirty thousand dollars. Said affiant believes that said Garner has been insolvent ever since October, 1826. Further this affiant saith not.

BENJAMIN PATTERSON.

Sworn and subscribed to before me, this 11th of September, 1828.

WM. BARKER, *J. P.*

Pursuant to the annexed notice, dated 16th day of September, 1828, I, Parker Smith, one of the commissioners appointed by the superior court of chancery, held at Wythe court-house, for the district of Wythe, for taking depositions for said superior court in the county of Washington, have this day caused Captain Francis Smith, a witness of lawful age, in behalf of the defendants, to appear before me, at the house of Augustus Oury, in the town of Abingdon, this 16th day of September, 1828, to give evidence in a cause now depending in said superior court of chancery, wherein James White and others are complainants, and L. L. Henderson and others are defendants. The said Francis Smith being first duly sworn in presence of the defendant McCall and James L. White, son and agent of Col. James White, one of the defendants, deposeth and saith:

Question by McCall. State the circumstances attending a transaction in which you delivered over to Thomas Claiborne certain notes which had been enjoined by an order of the chancery court in your hands.

Answer. James King's representatives had a considerable claim on the estate of William Trigg, for moneys paid by the estate of James King towards the payment of William King's debts; that claim I knew to be a just one, and wished it settled. I also wished the balance of the funds of Saltville belonging to James King's estate and William Trigg's estate, which had been enjoined in my hands, to be ascertained and paid over to those entitled to them; and Col. White, to whom I had been ordered by the chancellor at Wythe to pay them, having delivered me a written permit to that effect, the clerk at Saltville, Mr. Alexander Findlay, was called on to make out an exhibit of the balances due Saltville, discriminating between the good and bad debts; he did so, and it amounted to twenty-nine thousand two hundred and fifty-five dollars and some cents, calculating Brice M. Garner's

debt of $7,082 26, at $3,541 13, at which price I had sold it for Saltville to Mr. Thomas Claiborne; it was considered among the doubtful debts, and I told Major Claiborne it was bad; the one-third of the sum of $29,257 34, was my own; one-third belonged to Wm. Trigg's estate, and one-third to James King's estate; deducting a third for myself, left $19,504 89, to be divided between the estates of James King and William Trigg; but before the division they determined to pay the legacy due John D. Mitchell and Mrs. Litchfield, which amounted to $5,464, or thereabouts, which being deducted left $14,040 89, due the two estates of James King and William Trigg, in the following manner: William Trigg $7,120 44⅓, James King's heirs ⅔ of the half $4,680 30, Thomas Claiborne ⅓ of the half $2,340 14⅓. The following persons were present at the division of the Saltville funds, and aided in the distribution: Thomas Claiborne, Dr. McCall, Peter J. Branch, and myself; and all of us signed the settlement on the Saltville books, on a memorandum on the Saltville leger, in the following words: "We, the undersigned, this day divided the balance of the proceeds of Saltville, in the hands of Francis Smith, amounting to $29,068 97, and each released the other from all responsibility for the notes and debts we have received as our proportions of said balance. Date, Oct. 14, 1826, and signed by Francis Smith, Thomas Claiborne, Peter J. Branch, Alexander McCall. The representatives of William Trigg's estate immediately turned over the whole they were entitled to to James King's estate, in part discharge of the debt due from them to said estate as aforesaid; and James King's children owing a debt to Major Thomas Claiborne, as I then understood, or he having a claim against them to a considerable amount, they immediately transferred to him what they received from William Trigg's estate, as well as what they were then receiving in their own right of Saltville. Major Claiborne after that complained of his not having been informed thoroughly of the nature of Garner's debt, (though this affiant had told him it was in his opinion good for nothing,) and required a thousand dollars from Saltville to be paid him, or he would contest the matter in court. Two of the three interests in Saltville paid each a third of that sum, and I believe James King's estate settled the other third, so that Saltville in fact received but $2,541 13 for Garner's debt.

Question by same. In a schedule of all the notes made out by Alexander Findlay, was not Brice M. Garner's notes rated at half price, and required to be so taken by Thomas Claiborne, in the compromise with Trigg's estate? and said notes being considered desperate, was it not from a wish to conclude a compromise that Claiborne received them at all?

Answer. In the schedule made out by Alexander Findlay, Brice M. Garner's notes were rated at half price, as I said before, in consequence of Major Claiborne's having agreed to give that sum for them. I think it probable he agreed to give that sum to promote the settlement then talked of, and which created much excitement between William Trigg's estate and James King's estate, though he did not tell me so. I asked him how he expected to get it of Garner, as he was bankrupt in purse and integrity both: he answered me, he thought he could get lands in the western district of Tennessee from him for it, to the amount perhaps he was owing.

Question by same. If Claiborne in said compromise had agreed to release Wm. Trigg's estate from $10,000 of the debt due by them to James King's estate on account of Brice M. Garner's debt, would you conceive that that changed the actual value of said note in the hands of the receiver?

Answer. Whatever Saltville sold Garner's notes to Mr. Claiborne for, was the value of Garner's notes to Saltville, although the purchaser of the notes may have finally recovered nothing at all of Garner. I have received in the division of Saltville funds the one-third of $2,541 13 for Garner's notes.

Question by same. Although a settlement was talked of between Thomas Claiborne and James King's representatives in October, 1826, do you know that any such settlement ever took place? and from the tenor of an obligation filed in the receiver case at Wythe, a copy of which is now presented to you, would you not understand that, as to James King's interests in said Garner's notes, no change in the value was made—the said notes of Garner being, *as to James King's* interest, the same as if no transfer had ever been made of them to Claiborne?

Answer A settlement was *talked* in October, 1826, between Major Claiborne and James King's children, but I then and have always since understood from Dr. McCall, that no settlement had been; nor did I at any time understand from any person, that a settlement ever had been made between Major Claiborne and James King's children. My construction of the agreement now shown me between the different persons entitled to James King's estate, would, I suppose, be considered by the chancellor as gratuitous, and therefore I would prefer not answering. It is not facts within my own knowledge, and therefore not of my province as a witness.

Question by same. What was the condition of Saltville as to kettles, furnaces, pumps, &c. when you delivered your interest therein to Col. James White, Sept. 1824?

Answer. The furnaces, kettles, and all the machinery and tools for carrying on Saltville, were in tolerable order when I delivered them over; in as good order as they have since been for any length of time together, the pump excepted; that is better since than when we had it. I would be more particular in this answer, but do not recollect well, and believe all things were in as good order as they had been for years previous, and were to be returned in good order, as well as I remember.

Question by same. Was any inventory of the articles aforesaid taken at that time? Did Col. White go into possession of Thomas and Rachel Mary Eliza King's interest in the same? and what became of the broken metal, blacksmith's tools, &c.?

Answer. I believe in my agreement with Sanders, all things were to be returned as he received them; when I rented to Colonel White, I transferred my interest in the kettles and blacksmith tools to him for ever.

Question by same. Previous to your renting to Col. James White your interest in Saltville, did or did not Col. James White, on his return from Nashville, inform you that he had acquired the control of James King's interest in the saltworks, and were you not threatened with competition thereby?

Answer. He did inform me he had the control of James King's interest, and I expected competition.

Question by same. Under these circumstances did you not agree to take a rent per annum less than theretofore you had taken? and under these circumstances, was it not an important object with you to get an annuity during the continuance of the said interest. Please state the sum you received per annum for said interest.

Answer. Colonel White pays me annually for my interest in Saltville.

131.

$6,500. I would not have rented if James King's interest and William Trigg's would constantly have remained with me, and without competition my interest would have been worth more than $6,500 annually, but with competition not that much. Unless I could be sure of no competition, I would again, was the thing to be put to my option, make the same contract I did make; it was a valuable consideration with me to make a contract for life, and such Col. White made with me.

Question by same. Has or has not William Trigg, one of the heirs of William Trigg, deceased, assented, since arriving at the age of 21 years, to a contract made by his guardian, under which he was to receive $1000 per annum for his interest in Saltville? and if any condition accompanied this assent, what was it?

Answer. William Trigg has assented, since coming of age, to take a thousand dollars annually during the life of Mrs. Smith, for his interest in Saltville, but whether any condition is attached to it I know not.

Question by same. Did or did not Colonel White agree, in receiving your interest at 6,500 dollars per annum for life of Mrs. Smith, also agree to hire from you a certain number of negroes? Please state at what price per annum, and for how many years.

Answer. He did agree, in addition to taking my interest in Saltville, to hire twenty negroes from me at 80 dollars each, for the same time he has my interest in Saltville, and that was a further inducement to me to rent; they were generally the saltmakers or wagoners of Saltville.

Question by plaintiff. Did I ever have in my possession the debts handed over by you to McCall, Branch, and Claiborne?

Answer. No.

Question by same. Is not McCall's receipt, a copy of which you see, for dollars, not bad debts?

Answer. The receipt says dollars, but I know what was received was notes.

Question by same. Did you not hear me say to a gentleman, that I would give him a thousand dollars to release me from the rents?

Answer. I think I did. I have frequently heard you say you would thank any person to take your place and indemnify you from your undertaking respecting the rents.

Question by defendant McCall. Did you not at all times hold yourself ready and willing to act in obedience to the order of the chancellor, or his receiver, James White, in regard to the funds enjoined in your hands?

Answer. I did.

Question by same. When did you learn first that Brice M. Garner's debt was bad?

Answer. Several years ago; and I frequently mentioned his insolvency and worthlessness to Col. White and others, and the Colonel knew his situation as well as I did long before the notes were assigned.

Question by same. Has not Colonel James White, since the year 1819, May, had considerable dealings with Brice M. Garner, buying lands on the Tennessee, &c.?

Answer. I know not.

Question by same. Did Col. James White ever apply to you to obtain Brice M. Garner's notes, so that he might save the amount?

Answer. No; not that I recollect.

Question by same. In your answer to the first question, you have in-

serted the copy of a receipt from your Saltville books executed among the parties at the time of dividing certain notes. Please state whether I did not object to signing said receipt, until I was informed that it had a bearing only on the matters that day settled in reference to the division of said notes?

Answer. I do not remember.

Question by plaintiff. What does that balance amount to as spoken of in the receipt signed by Francis Smith, Thomas Claiborne, Peter J. Branch, and Alexander McCall?

Answer. To $29,068 97, as explained in the former part of this deposition. And further this deponent says not.

FRANCIS SMITH.

Costs—Commissioner employed 4 hours, $2 50.

I certify that the foregoing depostion in the case in which James White and others are complainants and L. L. Henderson and others defendants, was taken before me at the house of Augustus Oury, in the town of Abingdon, on the 16th day of Sept. 1828, pursuant to notice, and in the presence of the complainant, James White, and the defendant, Alexander McCall.

PARKER SMITH,
Commissioner in chancery.

Pursuaut to the notice hereto annexed, and dated the 6th day of September, 1828, I, Parker Smith, one of the commissioners appointed by the superior court of chancery, held at Wythe court-house, for the district of Wythe, for taking depositions for the said superior court in the county of Washington, have caused John M. Preston, a witness in behalf of the defendants, of lawful age, to appear before me, at the tavern of Augustus Oury, in the town of Abingdon, this 8th day of September, 1828, to give evidence in a cause depending in the said superior court of chancery, wherein James White and others are complainants and L. L. Henderson and others are defendants. The said J. M. Preston being duly sworn, deposeth and saith:

Question by defendant McCall's attorney. Please state the terms of a loan of Nashville or other Tennessee money made by you to Col. White, about the year 1823, and how the same was repaid.

Answer. I sold to Col. White, on the 13th February, 1823, from four to five thousand dollars in bank notes of the State and Nashville banks of Tennessee, at 12½ per cent. premium for par money, payable in May following, which sum I think was paid to me by a draft from Col. White on Talbot Jones, of Baltimore.

Question by McCall. State what is the cost of carriage ordinarily from Lynchburg, Va., to Abingdon, and what the carriage from Abingdon to Lynchburg?

Answer. Carriage from Lynchburg for the last year has been from two to two and a quarter dollars a hundred pounds; previous to that time it was from two dollars and fifty cents to three dollars; carriage from Abingdon to Lynchburg has generally been half price to what was paid from Lynchburg to Abingdon.

Question by McCall. During the last three years what has been the average cash price of bar iron and castings, delivered at your store in Abingdon?

Answer. The price of iron has varied in that time from ninety down to seventy-five dollars a ton, payable in merchandise at cash prices.

122.

Question by the complainant, White. At the time I purchased the Tennessee money from you was I, or was I not, on the point of starting to the West on a collection trip, and with a view to invest my Tennessee money in cotton in Alabama?

Answer. You were.

Question by same. Have you understood whether I made or lost largely on the purchase and sale of cotton in 1823 and 1824?

Answer. I have always understood, and do believe, you did *lose* largely about that time on the purchase and sale of cotton, but do not, with any certainty, know which of the years.

Question by same. Have you not purchased cotton in Alabama with a view of exchanging your Tennessee money, and, if so, how did you come out, and in what years did you purchase?

Answer. I purchased in Alabama in January and February, 1822, about twenty thousand dollars' worth of cotton, and on that amount lost about six thousand dollars, and my object was to exchange my Tennessee money.

Question by same. What was the general discount on Tennessee money in Abingdon in the years 1822, 1823, and 1824; and at what time did the difference of twenty five per cent. take place at Saltville?

Answer. The discount on Tennessee money in those years was very fluctuating—in 1822 from 10 to 20 per cent., in 1823 from 20 to 25 per cent., and in 1824 from 20 to 30 per cent. premium for par funds; I believe the difference of 25 per cent. took place in 1820, but cannot say with certainty.

Question by same. Do you recollect ——— Craighead having an order from General Preston on me for upwards of $1,000 in par money; if so, what premium did you offer him for the draft in Tennessee money?

Answer. I recollect of ——— Craighead's having an order on you, and I believe from General Preston, in August or September, 1824, and I offered the said Craighead 27 per cent. premium for some par money he had at the same time.

Question by McCall. When, shortly after September, 1824, you arrived in Alabama, what was the premium there; and, Abingdon being situate on the great road leading from the west to the east, did not travellers often sell small sums of bank paper to you, which paper would be much depreciated where they were going?

Answer. About the last of October, 1824, I went to Alabama for the purpose of exchanging Tennessee money for par funds, and effected an exchange of 12½ per cent. premium for drafts on Baltimore and New York, payable, I think, at sixty days after sight, but am not sure whether it was sixty days or less than sixty days after sight the drafts were payable. I have frequently bought small sums of Tennessee and other bank notes, both from people in the neighborhood of Abingdon and from travellers, and have generally given for such notes what they were generally selling for in Abingdon; and I do believe that the persons travelling were often going a direction that Tennessee bank notes would not pass at any thing like their value there in Abingdon.

Question by McCall. From 1819 to 1825 did not Tennessee bank paper form a considerable part of the circulating medium in this section of country, and was it not common to discharge debts and executions throughout the country with this paper at par.

Answer. Tennessee bank paper did form a considerable part of the cir-

culating medium from the year 1819 to 1825. It was not common to discharge debts with Tennessee bank notes unless the contract specified that such paper was to be taken in payment; executions, I think, were never settled by the payment of Tennessee bank paper unless by consent or direction of the plaintiff.

Question by McCall. Did not Col. White realize large profits by his speculations in cotton in the years 1824–'25; and was it in consequence of your vesting Tennessee paper in that article, during a previous year, that you lost $6,000, or was this loss to be attributed to other causes?

Answer. Col. White has some years made handsome profits by the purchase and sale of cotton, but I cannot now designate between the years he made profit and the years he has lost money by the operation, as I believe he has purchased cotton every year for the last eight or nine years. It was in consequence of my vesting money in cotton in the year 1822 that I lost $6,000, although had I sold my Tennessee funds I would not have lost near that sum.

And further this deponent saith not; subscribed by him this 8th day of September, 1828.

JOHN M. PRESTON.

Costs—Commissioner employed three hours this day.

Adjourned to meet at this place to-morrow, at 10 o'clock A. M.

PARKER SMITH, *Comm'r.*

Pursuant to adjournment the parties met at the house of Augustus Oury, in the town of Abingdon, as aforesaid, this 9th day of September, 1828.

Doctor Earl B. Clapp, another witness in behalf of the defendants, of lawful age, being first duly sworn, deposeth and saith:

Question by defendant McCall. Did or did not you and other securities of James King and Willam Trigg, executors of William King, deceased, employ Major Daniel Sheffey to appear as counsel in your behalf against the representatives, said Trigg and J. King, to save you harmless from said securityship; and what was the fee you and others agreed to give D. Sheffey, Esq., in that case?

Answer. We did employ D. Sheffey to appear for us in that case, and gave him thirty dollars each, which he received as equivalent to a fee of $500. We employed the said Daniel Sheffey as our counsel to defend us from any injury we might sustain as the securities of James King and William Trigg, executors of William King, deceased.

And further this deponent saith not; subscribed by him this 9th day of September, 1828.

EARL B. CLAPP.

Commissioner employed half an hour this day, and three hours on the 8th instant, $2 18¾.

I certify that the foregoing depositions, in the case in which James White and others are complainants, and L. L. Henderson and others, defendants, were taken before me at the house of Augustus Oury, in the town of Abingdon, on the 8th and 9th days of September, 1828, pursuant to notice, and in presence of the complainant White, and the defendant McCall.

PARKER SMITH, *Comm'r.*

The deposition of Robert Woods and Barton Richmond, taken before me, Elihu S. Hall, an acting justice of the peace for the county of Davidson, State of Tennessee, at the request of Alexander McCall, to be read as evidence in a suit now depending in the superior court of chancery, at Wythe court, in the State of Virginia, wherein James White is complainant, and Lilburn L. Henderson (executor) and others, defendants. Robert Woods being first duly sworn, deposeth:

Question 1. State the average rate of exchange during the years of 1819, 1820, 1821, 1822, 1823, 1824, 1825, 1826, and 1827, at Nashville, between silver and the notes of the Nashville bank and branches and the State Bank and branches?

Answer. The banks of Tennessee, as well as I remember, suspended specie payments in the month of June, 1819, until which time their paper demanded specie at par; during the balance of the year 1819, I think exchange averaged from 3 to 5 per cent. advance on specie, an *average* of 4 per cent.; from 1st January, 1820, to 1st April, exchange was at about 5 per cent., and gradually advanced to the end of the year to 13 per cent., an *average* of 9 per cent. On 5th January, 1821, exchange was at 12½ per cent. advance on specie for the notes of the Nashville bank and branches and State bank and branches; in the month of May, 1821, 20 per cent.; in the month of August 25 per cent.; in the month of October, 1821, 21 per cent.; and in the month of December 16 per cent.; making an *average* of about 18¾ per cent. advance for the year 1821.

Exchange on 2d January, 1822, was about 15 per cent. advance; in the month of May 2 per cent advance; August 22 advance; and in October 20 advance; making an *average* of about 19¼ per cent. advance for the year 1822.

Exchange on 16th January, 1823, was 22 per cent. advance; in the month of May 31 per cent. advance; in the month of August 35 per cent. advance; and in December 20 to 21 advance; making an *average* of about 27 per cent. advance for the year 1823.

Exchange on 2d January, 1824, was about 20 per cent. advance; in the month of May 27 advance; in the month of July 25 advance; and in November 14 per cent. advance; making an *average* of about 21½ per cent. advance for the year 1824.

Exchange in January, 1825, was 5 per cent. advance; in the month of May 8½; and in December 6 per cent. advance; making an *average* of about 6½ to 7 per cent. advance for the year 1825.

Exchange in January, 1826, was 8 per cent. advance; in the month of May 6 per cent.; and in September of this year the Bank of Nashville resumed specie payments, which equalled the exchange between the paper of the different banks of Tennessee and specie. The paper of the banks of Tennessee was all on a par with specie in the year 1827, except the paper of the Nashville bank and branches. This bank having suspended specie payments late in the year 1826, either in the month of November or December, 1826.

Question 2. State whether the market price of cotton was not in the currency of the country, consisting of Tennessee and Alabama bank paper, so that cotton purchasers from the eastward generally exchanged their sound funds for the currency of Tennessee and Alabama at the highest premium they could obtain, there being but few planters unwilling to receive the currency of Tennessee for their cotton at the market price?

Answer. Cotton purchasers from the east or north, who wished to purchase cotton in this country, generally disposed of their sound funds for the best premium they could obtain for the bank paper of this State or Alabama, with which they purchased cotton, and the planters received the paper of the banks of this State for their cotton very cheerfully, with few exceptions.

Question 3. State at what periods, or whether at all times, since 1819, Tennessee paper could not have been loaned on satisfactory security at twelve months, to be paid in sound funds, excepting the Nashville bank paper, after that bank had suspended payment in November, 1826?

Answer. I am of opinion that the bank paper of the Nashville Bank and branches and State Bank and branches could have been loaned in the county, or one of the adjoining counties, either in the years of 1819. 1820, 1821, 1822, 1823, 1824, 1825, to solvent men, and payment well secured at twelve months, to be paid in sound funds. *Loans* of this description we made on our own account and received sound funds. Notwithstanding the high rate of exchange the banks of this place were all in the habit of making loans of the above mentioned description to very considerable extent.

ROBERT WOODS.

I hereby certify that, to the best of my knowledge, Tennessee bank notes were at a discount of about ten per cent. in the years 1819 and 1820, and from that time until 1826 they have averaged, in the year 1821, 16 per cent., and 1822, 20 per cent., 1823, thirty-one per cent., 1824, 19½ per cent., 1825, 6½ per cent., 1826, 6½ per cent.; and, furthermore, am satisfied that the branch of the Nashville bank at Rogersville has always continued to redeem its notes with specie, as likewise the branch of the State bank at Jonesborough, Tennessee.

B. RICHMOND.

I, the said Elihu S. Hall, an acting justice of the peace in and for the county of Davidson, and State of Tennessee, do hereby certify that the foregoing depositions of Robert Woods and Barton Richmond were sworn and subscribed to before me. Given under my hand and seal, at Nashville, this 7th day of January, 1828.

E. S. HALL. [SEAL.]

In pursuance of notice I have proceeded, this 24th day of October, 1824, to take the deposition of Harold Smyth and others, to be read as evidence in a suit depending in the superior court of chancery, wherein James White and others are plaintiffs, and Thomas King and others are defendants.

The said Harold Smyth, being first duly sworn, deposeth and saith, that he has examined a receipt on an execution from the clerk's office of the superior court of law for Washington county, in the name of Pollock, Treadway & Co., against the goods and chattels of William King, deceased, in the hands of William Trigg, surviving executor of the said William King, for the sum of thirteen hundred and fifty-three pounds, with interest from the 2d of July, 1810, which execution is signed by Andrew Russell, and dated the 13th February, 1814, and which receipt is on the back of said execution, and in the following words:

"Received of Charles Tate the full amount of the within execution. July 6, 1815.

L. L. HENDERSON, *Assignee of Pollock, Treadway & Co.*"

134.

And that he was well acquainted with the handwriting of the said L. L. Henderson, and his signature, having frequently seen him write; and that the said receipt and signature thereto is, to the best of his belief, in the proper handwrite of the said L. L. Henderson. And further this deponent saith not.

HAROLD SMYTH.

John P. Mathews, another witness, being first duly sworn, deposeth and saith: That he has examined the settlements made by him of the accounts of Col. James White, as receiver of the rents and profits of the saltworks, and finds in the report of May, 1822, the receiver has a credit for payments to Gen. Preston of $4,530 50, under date of 20th May, 1820, from which the sum of $203 50 is deducted for error, with the following explanation: this payment being made to General Preston by delivering to him his note due 4th November, 1815, included in Col. White's receipt to Francis Smith, Esq. This deponent cannot at this time recollect in what way, or from what evidence, he ascertained the fact as stated—whether it was from Col. White's statement to him, or from a statement furnished by General Preston of his claim against the estate of William King, in which a credit is given for the sum of $4,530 50, as a payment made in General Preston's bond to Smith and Carson, and interest paid May 20, 1820. This deponent can only say that he must have been perfectly satisfied, at the time, of the propriety of making the deduction of $203 50, and thinks Col. White must have considered it correct at that time, or some objection would have been made by him. And further this deponent saith not.

J. P. MATHEWS.

General Francis Preston, another witness, being first duly sworn, deposeth and saith: That he borrowed a sum of money from Smith & Carson, for what amount the deponent does not recollect, nor does he recollect the date of note he gave, not being able to lay his hand on the note, which note was passed to Col. White, I believe, as receiver for King's estate, which estate was considerably in debt to this deponent, a decree for which this deponent had, and for which Col. White became the paymaster.

A statement of these transactions, made out in my own handwriting, which is filed with Master Commissioner Mathews, and which seems to be made out about May, 1822, in the following words as to that item: "Credit my bond to Smith & Carson, and interest, paid May 20, 1820, $4,530 50," which this deponent thinks was intended to include the principal and interest of said debt up to that time, as this deponent has no recollection of receiving any money from Col. White at the time this note was settled, though he has a most imperfect recollection of the transaction, and because in no instance does the deponent recollect of Col. White paying to him money when he obtained this deponent's receipts as a credit as receiver for said estate, but uniformly gave me his notes corresponding with my receipts. And further this deponent saith not.

FRANCIS PRESTON.

The foregoing depositions were taken and subscribed before me at the time and place first herein mentioned.

J. R. MILLER.

One hour engaged in taking the foregoing depositions.

J. R. M.

The deposition of Benjamin Estill, a witness for the defendants, taken at the court-house of Wythe county, on the 24th day of October, 1828, to be read as evidence in a cause depending in the superior court of chancery for the district of Wythe, wherein James White, &c., securities of William Trigg, deceased, &c., are plaintiffs, and Henderson's executors, &c., are defendants, who being first duly sworn, deposeth and saith:

That, perhaps a year or two ago, as well as he recollects, he was called on by Doct. McCall, who intermarried with Elizabeth, the daughter of James King, deceased, Peter J. Branch, who intermarried with Rachael, the widow of L. L. Henderson, and Thomas Claiborne, who intermarried with Sarah, the widow of James King, to prepare some writings effectuating a settlement between the two estates of James King and William Trigg, who had for some time acted as executors of William King, deceased. That the estate of William Trigg was found indebted to the representatives of James King in a considerable amount, which was, as well as this deponent recollects, agreed to be paid part in hand and the remainder in instalments, perhaps annual. That Col. James White, the receiver in this case, who it was understood had in the hands of Captain Smith notes on various persons, part of the fund enjoined in this case, agreed to advance something upwards of $14,000 on those notes, which were wanted by the representatives of James King for Thomas Claiborne, and were in payment to them by the representatives of William Trigg, which notes Thomas Claiborne received at that time as this deponent understood. Doct. McCall and Thomas Claiborne alone were present on the part of the representatives of J. King, but this deponent understood the former had some power or authority to act for the other representatives or heirs of J. King. That among those notes received by Claiborne, was one to a considerable amount on Brice M. Garner, the solvency of whom was then doubted, as this deponent understood, and who has, as he understands, failed without paying any part of said note. That this deponent was required to prepare a receipt for half of those notes from the representatives of J. King to Colonel White, or rather, as he believes, from Doct. McCall, as representing their interests, which he did, stating truly, as well as he recollects, the transaction as it took place, and particularly the payment of the notes; on shewing it to Col. White he objected to it, and required the receipt to be so drawn as to say that the $7,000 paid in notes as aforesaid were paid in dollars. This deponent advised Doct. McCall that it was unimportant how the receipt was worded; that on proof that the $7,000 were paid in notes and not in dollars, the effect would be the same in a court of equity as if so expressed in the receipt, the only effect of which would be to throw the onus of the proof upon him. In consequence of this advice, as deponent understood, Doct. McCall signed a receipt afterwards prepared by this deponent according to the wishes of Col White; which receipt this deponent supposes Col. White has in his possession, as it was delivered to him. In the settlement of the matter, this deponent acted as the counsel of William Trigg's representatives, of which he advised Doct. McCall, and also of the latter, as far as he could do so consistent with his prior engagements with William Trigg's representatives. He has no interest in the subject to which his deposition relates, so far as he knows or believes. This deponent's recollection is not very good in relation to such matters; he thinks, however, that he has a very distinct recollection of the facts relating to the receipt executed by McCall, and of the fact that the payment of the $7,000 aforesaid of

Col. White to him, was for the representatives of J. King and not for himself alone. This deponent is informed that Brice M. Garner's note was not received at its nominal amount, but upon that subject he does not recollect any thing, if he ever knew at what sum it was received; Captain Smith, he understands, has given a deposition, which will fully explain this matter. This deponent not being further interrogated, further saith not.

BENJAMIN ESTILL.

Sworn to and subscribed before me, in the clerk's office of the county of Wythe, at the time first herein mentioned.

J. R. MILLER, *Com.*

In pursuance of the enclosed commission, to us directed, from the clerk of the superior court of chancery, sitting at Wythe court-house, in the Commonwealth of Virginia, we have caused to come before us at the office of John H. Lewis, in the town of Huntsville, and State of Alabama, on the 9th day of April, 1829, Benjamin Pattison, aged about thirty-eight years, who first being sworn upon the Holy Evangelist the truth to speak in a certain matter of controversy now pending in said court, wherein James White and others are complainants, and L. L. Henderson's executor and others are defendants.

1st question by the defendants. Did you know one Brice M. Garner, with his circumstances, during the years 1819, 20, 21, 22, and 23? if so, could the sum of 7 or 8,000 dollars, by suit, have been collected?

Answer. I was acquainted with him during 1819, 20, 21, and think that judgment had have been obtained against him during those years the money could have been made.

Question 2d. Did not Brice M. Garner own a valuable estate, called Brown's Ferry? what do you suppose said estate was worth, and when did he sell it? it lay in Limestone county, Alabama?

Answer. He did own such an estate, and I believe it to have been worth at that time $20,000; he sold said estate in the winter of 1822 and 1823; from report he sold it to one John W. Tilford.

BENJAMIN PATTISON.

Sworn and subscribed to before us,

JOHN H LEWIS, [SEAL.]
Mayor of Huntsville, and act. J. P.
WM. BARKER, *J. P.* [SEAL.]

We, John H. Lewis and William Barker, acting justices of the peace for Madison county, and State of Alabama, do hereby certify, that the foregoing deposition was taken in pursuance of a previous notice, at the office of J. H. Lewis, in Huntsville, and in the presence of the agents of the complainants and defendants; and that the same, subscribed to by the deponent in our presence, was duly sealed up and placed in the post office without any alteration being made thereto. In testimony whereof, we have hereunto set our hands and seals.

JOHN H. LEWIS, [SEAL.]
WM. BARKER, *J. P.* [SEAL.]

In pursuance of the enclosed commission, to us directed, from the superior court of chancery, holden at Wythe court-house, in the State of Virginia, we have caused to come before us, at the tavern of John P. McConnell, in the town of Fayetteville, Lincoln county, State of Tennessee, on the

1st day of October, 1829, between the hours of 9 o'clock A. M. and 6 o'clock P. M., James Fulton, aged about thirty-one years, a witness in behalf of defendants in a certain matter of controversy in said court depending, in which James White and others, securities of James King and William Trigg, executors of William King, deceased, are plaintiffs, and the heirs and legal representatives of James King, deceased, and of William Trigg, deceased, are defendants; and the said Fulton being by us first sworn according to law, deposeth and saith:

Question 1st by defendants. Were you or not counsel of James White in a suit against Robert W. Dickson?

Answer. In July, 1824, I think, a note for about $8,000, as I believe, on R. & Wm. Dickson, also a draft drawn, as well as I now recollect, by R. & Wm. Dickson on some person in New Orleans, in favor, I believe, of Findlys, was handed me for collection by a man by the name of White, of Abingdon, Virginia; I gave Mr. White a receipt for these claims, in which I think I specified, at his request, that I would commence suit on those claims in the federal circuit court in Nashville, and that I would charge for my services what was usually charged for the like services in that court; suits were accordingly commenced on said claims in said court against said Dickson in a very short time after they were put into my hands. The note above alluded to was payable to Francis Smith, as I believe, and the draft was, as I think, for something more than 22,000 pounds of cotton.

Question 2d by defendants. When was judgment obtained? when was the money on judgment recovered, and by whom?

Answer. I think judgment was obtained on the note on the 16th June, 1825, for $10,657 72, and that judgment was rendered on the draft in June, 1827, but for what amount I do not now remember, but think it was about $2,500. Robert Dickson paid me, on account of the first judgment, I think, $350, in the latter part of the year 1825 or early in the year 1826. On the 20th day of August, 1828, I received a letter from James White, of date 23d July, 1828, from which the following is an extract: "On the application of William Dickson, on behalf of Messrs. Robert & William Dickson, respecting the judgment you have obtained in the federal court at Nashville, for my benefit, against them, I have agreed to receive Mr. William Dickson's two notes for the amount due, *with interest;* (their paying all costs;) the first payable the 10th day of October next, in United States money, for half the amount you may find due; for the other half his note payable, same currency, the 10th day of May next. The Messrs. Dicksons will produce to you my two receipts; this, together with the amount they paid and will pay you for commission, (this I think you will be moderate in,) you will deduct from the principal and interest of the two judgments; you will then receive William Dickson's notes, payable as above mentioned to me, for the balance on the first judgment and the whole of the second." I did make the calculation as directed in the above extract, and after deducting from the principal and interest due on said judgments the said $350 paid to me, and also the amount paid said White as per his said two receipts produced by the Dicksons, I ascertained that there would be due on said judgments, including interest, on the 10th October, 1828, and 10th May, 1829, $6,912 36 cents, in discharge of which I received one note on William Dickson for $3,422 87, payable to James White, dated 21st August, 1828, and due 10th October, 1828; also one other note on William Dickson, payable to said White, of same date, for $3,489 49, due 10th May.

1829; which notes I sent to Col. White, by his direction, by hands of John Dickson, on the 25th August, 1828.

Question 3d by defendants. Did you or did you not, by White's direction, receive commissions on the whole amount of that debt, although the sum was not collected?

Answer. I never, to the best of my recollection, had any directions from White upon the subject of receiving commissions on the above debts, except what is contained in the above extract from his letter of date 23d July, 1828. I do think Colonel White once, in Fayetteville, after he had seen my receipt to the Dicksons for $350, mentioned the subject to me, and stated I must be moderate in my fee; I have no recollection of any other conversation between us upon that subject. I did retain the whole $350 for my commission, &c.; I done so because I thought that Col. White had no right, by postponing the collection of the debts, to delay also the payment of my fee.

Question 4th by defendants. Could not the money have been sooner collected, and was not the collection delayed by White?

Answer. Very soon after the judgment was obtained on the note, the deputy marshal, by my direction, came out to Fayetteville with an execution, for the purpose of levying the same on the property of Robert Dixon, and *perhaps* did make a levy, but of this I am not certain; sometime afterwards I received a letter signed James White, by J. L. White, dated Abingdon, August 18th, 1825, from which the following is an extract: "In consequence of promises and part payment of the debt due by R. & W. Dickson, you will please to do nothing more in that suit until next winter, as that is the time they have said I should be paid the full amount without further difficulty." "N. B. The note R. & W. Dickson never have disputed; the draft they did: and if you have not yet got a judgment, you will then continue the suit on the draft, and stop all proceedings if none is disputed." Upon the receipt of this letter I moved no further in the matter at that time. I also received a letter from James White, dated Huntsville, March 8th, 1826, from which the following is an extract: "I understand there is a judgment on the note of $8,000 in favor of Francis Smith vs. Robert & William Dickson. Mr. William Dickson is making me considerable payments on that judgment, including your receipt for $350; you will, therefore, stop further proceedings on that judgment until further ordered." Afterwards I received a letter from James White, dated Abingdon, May 3d, 1826, from which the following is an extract: "If there is no judgment on the draft, prosecute and obtain one immediately; if they should make no defence, and you get a judgment, delay pressing just now for payment." Afterwards I received a letter from James White, dated Abingdon, January 2d, 1827, from which the following is an extract: "In consequence of the assurances of the Messrs. Dicksons that the debt should be settled and paid without the necessity of an execution, I wrote to you accordingly, and directed if there were judgments on both debts to stay the proceedings, but that if there was not, to proceed unto judgment in both cases, and then to let them rest until further ordered." The following is an extract from the same letter: "I do hope these copies will answer the purpose, and that you will now proceed on with the least possible delay until you get judgment, and then advise me thereof; you will not order executions until directed." I afterwards received a letter from James L. White, dated Abingdon, June 11th, 1828, from which the following is an extract: "My father desires

me to say to you that W. Dickson, of Greenville, who it was expected would settled those claims of R. & W. Dickson, has now ordered that an execution should issue and obtain it of R. Dickson; he, therefore, requests that you will immediately attend to it, and push it to the utmost extent, that he has been put off time after time, and has to order an execution at last. A part of the note was paid, for which you will see a receipt given to them; no part of the draft." Afterwards I received a letter signed James White by J. L. White, dated Abingdon, July 4th, 1828, from which the following is an extract: "Your favor of 23d ultimo was received by last mail, and ten days or two weeks ago I had written to you that William Dickson said the execution must now be pushed, and money must be paid by R. & W. Dickson; you will, therefore, collect it as soon as practicable." And soon after the receipt of the letter dated June 11th, 1828, as I could well do so, I procured the deputy marshal to come out to Fayetteville and levy upon Dickson's property to satisfy said two claims, and was proceeding to have the same collected when I received a letter from James White, of date July 23d, 1828, from which an extract has been given above; and during all this period up to the time at which I received said last mentioned letter, I believe that the whole amount of said claims could have been made out of the property of R. & W. Dickson at Fayetteville. I neglected to state, that a few weeks after judgment was obtained on the draft, I directed a letter to Col. White, at Abingdon, informing him of that fact. And further this deponent saith not.

JAMES FULTON.

Sworn to and subscribed before us, this 1st October, 1829.

THOMAS GAITHER, *J. P. Lincoln co.*
STEPHEN ALEXANDER, *J. P. Lincoln co. Tennessee.*

STATE OF TENNESSEE, *Lincoln county*, sct.

We, Thomas Gaither and Stephen Alexander, two of the acting justices of the peace in and for the county and State aforesaid, do hereby certify, that the foregoing deposition of James Fulton was taken by us at the time and place mentioned in the caption, and that the caption and the answer to the interrogatories are all in the handwriting of the deponent. Given under our hands this 1st day of October, 1829.

THOMAS GAITHER, *J. P. for said co.*
STEPHEN ALEXANDER, *J. P.*

VIRGINIA, *Washington county*, to wit:

Pursuant to the within notice, we, the undersigned, justices of the peace for said county, have caused to come before us, at the office of John H. Fulton, in the town of Abingdon, on this 12th day of October, 1829, John H. Fulton, a witness for the defendants in a certain suit now depending in the superior court of chancery, holden at Wythe court-house, wherein James White and others are complainants, and the representatives of William Trigg and James King and others are defendants. The said John H. Fulton, being by us first duly sworn in the presence of one of the defendants, Alexander McCall, and of John N. Humes, Esq., agent for the complainant, James White, deposeth and saith:

That the instrument of writing filed with his deposition in the suit of James White, complainant, and William Heiskell and others, defendants,

137

was shewn to him; he states, that it purports to be an agreement between L. L. Henderson, Alexander Fulton, and Peter Mayo; that the agreement is in the handwriting of Peter Mayo, dated the 5th October, 1813 The witness is acquainted with the handwriting of L. L. Henderson, Alexander Fulton, and Peter Mayo, and states that the instrument contains their proper signatures and handwriting. And further this deponent saith not.

J. H. FULTON

WASHINGTON COUNTY, to wit:

The foregoing deposition of John H. Fulton was taken, subscribed, and sworn to, before the undersigned, two justices of the peace for the county aforesaid, at the office of John H. Fulton, in Abingdon, on the 12th of October, 1829. Given under our hands and seals, October 12th, 1829.

EDWARD LATHUN, [SEAL.]
DANIEL LYNCH, [SEAL.]

The deposition of John H. Fulton, taken before me at the court-house of Wythe county, on Wednesday, the 28th of October, 1829, to be read in evidence in a suit depending in the superior court of chancery holden at Wythe court-house, wherein James White and others, securities of James King and William Trigg, are plaintiffs, and L. L. Henderson, executor, and others, are defendants. The deponent being of lawful age, and duly sworn, deposeth and saith:

That the paper herewith filed, purporting to be a receipt executed by Alexander Fulton to William King, Esq., was presented to him; that he is acquainted with the handwriting of the said Alexander Fulton; it is dated 22d , 1807. This witness says he has, in one or two instances, seen the subscribing witness, James Shelby, write; he has seen much writing said to be his, but can only state, as a matter of opinion from the circumstances mentioned, that the signature of James Shelby as a witness to said paper, is in the handwriting of said Shelby; he is totally unacquainted with the handwriting of Addison Carrick. He further states, that James Shelby has been some years dead. And further this deponent saith not.

J. H. FULTON.

The foregoing deposition was taken and subscribed before me, at the time and place above mentioned, the defendant, McCall, and Mr. Hume, agent for the plaintiff, White, being present.

J. R. MILLER, *Com.*

The receipt filed with the foregoing deposition is as follows, viz:

Received, Abingdon, December 22d, 1807, of William King, Esq., his note this date, at two months, for two thousand five hundred dollars; one note, same tenor and date, payable three months after date, per three thousand dollars; one note, same tenor and date, payable four months after date, per three thousand five hundred dollars; one note, same tenor and date, payable five months after date, per four thousand dollars; one note, same tenor and date, payable six months after date, per ten thousand dollars; one note, same tenor and date, payable seven months after date, per nine thousand six hundred and twenty-seven dollars and fifty-four cents; also William King and Conally Findlay's joint note, dated the 26th January, 1806, (six) per fourteen thousand dollars; also cash one hundred dollars, and fifteen hundred dollars to be sent Luke Tiernan, of Baltimore, will make together

forty-six thousand six hundred and twenty-seven dollars and fifty-four cents, the notes when paid will be in full of all demands of the late firm of Alexander and James Fulton.

ALEXANDER FULTON.

Teste, ADDISON CARRICK,
JAMES SHELBY.

WYTHE COUNTY, set.

This day came James White before me, the subscriber, a justice of the peace for said county, and made oath that he was appointed receiver by the superior court of chancery, holden at Wythe court-house in May, 1819, to superintend the saltworks belonging to the estate of the late William King, deceased; that among the funds committed to the charge of this affiant, were debts to a very large amount due to the saltworks, some from persons residing in the western country, States of Alabama and Tennessee; that this affiant visited that country every year for the purpose of adjusting the business connected with his duty, as well as to attend to business of his own, that is, collecting and securing debts, making exchanges of funds, so as to suit the purposes of the trust; that he was compelled every term of the superior court of chancery to attend on the business of his said office, and remain generally a week or more; that in executing the business in the western country, it was often necessary to take with him another person to assist him; that he had occasionally business of his own, which he transacted when abroad; that he kept no account of his expenses, being in expectation of receiving compensation either in gross or a commission, but that being denied him by the late chancellor, he considers it just that he should be paid a reasonable sum for them. This affiant can give no certain estimate of the amount expended which is properly chargeable; he believes, however, that his annual expenses varied from between one hundred and three hundred dollars. Given under my hand this 26th May, 1827.

JOHN JOHNSTON, *J. P.*

STATE OF ALABAMA, *Madison county.*

This day, Germanicus Kent, one of the firm of Yeatman & Kent, merchants, Huntsville, personally appeared before me, Richard B. Purdour, an acting justice of the peace in and for said county, and he, after being first duly sworn, deposeth and saith: that specie and United States' Bank notes rated above Huntsville and Tennessee bank notes (at Huntsville, Alabama) at about as follows: in November, 1821, at 20 per cent.; in December of the same year, 18 per cent.; and in January, 1822, at about 12½; in April of same year, 20 per cent.; in 1823, in the month of January, 24 per cent; in May, at 25, and July at about 34 per cent. Further this deponent saith not.

GERMANICUS KENT.

Sworn and subscribed to before me, at Huntsville, in the county and State above mentioned, this 19th September, 1826.

RICH'D B. PURDOUR, *J. P.* [SEAL.]

HUNTSVILLE, 19*th Sept.* 18—.

We certify that Mr. Germanicus Kent, of the house of Yeatman, whose name appears to the affidavit on the other side, is a highly respectable gentleman, and that the house of Yeatman & Kent stands deservedly well.

MARTIN BRADLEY & CO.
LOWE & MANNING,
STEPHEN S. EWING,
JOHN READ.

VIRGINIA, *Wythe county*, to wit: This day Clark G. Gardner, of lawful age, made oath before me, the undersigned, justice of the peace for Wythe county, that he has known Jacob Lyon, near King's saltworks, since 1820 until the present time, and believes him to be solvent and good for five hundred dollars or more during that period.

J. A. SANDERS.

JAMES WHITE
vs.
HENDERSON, executor, &c.

The subjoined affidavit is taken to be read in evidence in a suit now depending in the superior court of chancery, sitting at Wythe court-house, Virginia, in the suit James White vs. Henderson, executor.

This day A. D. Veitch personally appeared before me, Richard B. Purdour, a justice of the peace for Madison county and State of Alabama, and makes oath that, in the years 1820, '21, and '22, he was a broker in the town of Huntsville and State aforesaid, and during that period kept a regular account of the exchange between Tennessee bank notes and specie, and finds, by a reference to his books, that in July, 1820, specie was worth a premium of 10 per cent. in Tennessee money; and that in October of that year it was 12½ per cent.; in January, 1821, it was 10; in February 11; in March 12½; in April 13½; in May 14 to 17 per cent.; in June 20 per cent.; in July 22; in August 28; September 18 per cent.; October 22; in 1822, April 20 per cent.; May 18; June 15; July 17; August 15; September 18; October 15; November 16; December 15 per cent. During this period North Carolina was an average of 3 to 5 per cent. better than Tennessee, and so was Georgia, and as such was taken in payment of debts, bought cotton, any thing that was for sale in the country. Before July 1820, say about May of 1820, the Huntsville bank paid specie, and up to that period exchange varied from 3 to 9 per cent. between specie and Tennessee money, so that its specie average may fairly be estimated at 4½ premium. Affiant further states, that Tennessee money could, even when at its greatest depreciation, have been loaned in Huntsville, on the best of security, on 12 months credit, for par funds; and this affiant as broker made a considerable loan at a much shorter period; many such contracts were made, and the *courts*, when coercive means had to be resorted to, affiant is informed were fully sustained. During all this period, as well as affiant recollects, Col. James White, of Abingdon, Virginia, was an extensive dealer in cotton. Further this affiant saith not.

A. D. VEITCH.

Sworn and subscribed before me, this 18th of January, 1828.

RICH'D B. PURDOUR, *J. P.*

Personally appeared before me, William Bibb, a justice of the peace for Madison county and State of Tennessee, Stephen S. Ewing, who makes oath, that some where about the years 1822 or '23, James White, of Abingdon, Virginia, received from him, affiant, the sum of, eighteen hundred dollars, or thereabouts, as part payment of a note drawn by affiant to Henderson & Beatty, for six thousand five hundred dollars; that said White received said payment in bank paper, and made no demand for any thing else; the note was payable in *dollars*, and was executed before any great depreciation took place in the bank paper that circulated in North Alabama. The above affidavit is taken as evidence in a suit now pending in the superior court of chancery in Virginia, sitting at Wythe court-house.

STEPHEN S. EWING.

Sworn and subscribed to before me, this 18th of January, 1828.

WM. BIBB, *J. P.* [SEAL.]

This day came Francis Smith before me, and made oath, that whenever Col. James White, as receiver of the rents of Saltville, executed a receipt to him for said rent, no money was actually delivered by him to said White: he, said White, as renter of Saltville, not having delivered the money due for said rent to this affiant.

Sworn to before me, at the court-house in Abingdon, this 29th of April, 1828, in the presence of Col. James White and Mr. Charles Johnston.

TOBIAS SMITH.

STATE OF ALABAMA, *Madison county.*

This day Andrew D. Veitch, merchant and exchange broker, of the town of Huntsville, in the county and State aforesaid, personally appeared before me, Richard B. Purdour, an acting justice of the peace in and for said county, who being first duly sworn, deposeth and saith: That specie and United States' bank notes were at the following premiums above Tennessee and Huntsville bank notes, in the following years and months: in the year 1820, in the month of January, 10 per cent.; in February, March, April, and May, 8 per cent.; June, 11; July, 13; August, 10; September, 12½; October, 16; November and December, 15 per cent.; and average through the year at about 11 per cent.; and that the year 1821, in the months of January, February, March, at 15 per cent.; April and May, 18; June, 20 per cent.; July, 25, and August, 25; September, 23; October, 20; and November and December, 18 per cent.; average through the year at about 20 per cent.; and that the year 1822, in the months of January and February, 15 per cent.; March, 17; April, 20; May, 22; June, 20, and July, 22; August, 20; September, 21; October, November, and December, 20 per cent.; and that the average through the year was about 20 per cent.; and this deponent further states, that in the year 1823, January, was 20 per cent.; in February and March, 22; in April, 26; in May, June, July, and August, 30 per cent.; in September and October, 25; in November, 27, and December, 25 per cent.; and that it averaged about 26 per cent. that year. Further this deponent saith not.

A. D. VEITCH.

Sworn and subscribed to before me, this 18th September, 1826.

RICH'D B. PURDOUR, *J. P.* [SEAL.]

139.

HUNTSVILLE, *Ala.*, 18*th Sept.*, 1826.

We certify that Mr. Andrew D. Veitch, whose name appears to the affidavit on the other side, was a respectable exchange broker and merchant of this place in the years 1820, 1821, 1822, and 1823, and that he is now a very respectable merchant still of this place.

MARTIN BRADLEY & CO.
LOWE & MANNING,
STEPHEN S. EWING,
JOHN READ.

HUNTSVILLE, 18*th September*, 1826.

Being called on by John Reed to say what I know or recollect about a sum of money which I paid to Col. James White, of Abingdon, Virginia, some time in the year 1823, on one of my notes in favor of Henderson & Beatty. As well as I now recollect, before the arrival of Colonel James White in Huntsville, I was informed by Mr. Alexander Findlay, of Abingdon, Virginia, that Col. White owned or had the collection of part of one of my notes to Henderson & Beatty. On inquiring of Mr. Findlay as to what kind of money would be demanded, he answered, sound funds. I answered Mr. Findlay, and said, If Col. White demanded sound funds, I *would not* pay him. I however paid the Colonel, immediately on his arrival, in Tennessee bank paper, which he received so far as he was interested in my note; the amount, I think, was fifteen hundred dollars. This was the only kind of money I considered they had a right to demand of me. My several notes to Henderson & Beatty amounted to about twenty-five thousand dollars, which was almost in every case paid off with Tennessee bank notes. I did however pay a small part of the above amount in sound funds, which I considered a voluntary act on my part, as the time of payment was extended in consequence of my promise to pay in sound funds.

STEPHEN S. EWING.

HUNTSVILLE, 19*th September*, 1826.

Col. JAMES WHITE, *Abingdon, Va.:*

Dear Sir: I am in receipt of your favor of the 23d ultimo, and enclosed you have Mr. Ewing's statement as to the amount paid you on his note favor of Henderson & Beatty, which shews very clearly what his views were as to what kind of money he considered he ought to have paid. You will also find affidavits of A. D. Veitch and Germanicus Kent, which go to show the rates of exchange for the years 1820, 1821, 1822, and 1823. These two houses operated pretty heavily in exchange in the above years, and are the only ones who kept regular books for that purpose in this place. I am well assured, from my own knowledge of the rates of exchange, that their statements are correct. Mr. Ewing could not recollect how exchange rated when he paid you, but you will see from Mr. Veitch's affidavit, that specie and United States' bank notes was at an exchange *premium* of 26 per cent. over Tennessee bank notes through the whole of 1823, and I well recollect that in the summer of that year I paid 23 per cent. premium for a draft at 60 days' sight on New York for 1000 dollars, and United States' paper was worth more. This was the current rate for some time; for after my return from New York, which was at least 60 days thereafter, Messrs. James Woods & Co., of Nashville, sold some United States' paper on account of the late firm of White & Read, for 32 per cent. premium. There

was generally but little difference in exchange between this place and Nashville. I hope the papers will answer the purpose for which you intend them, and am, most respectfully, your obedient servant,

JOHN READ.

STATE OF TENNESSEE, *Lincoln county.*

In pursuance of the enclosed commission, to me directed, from the superior court of chancery holden at Wythe court-house, in the Commonwealth of Virginia, I have caused to come before me, at the tavern of John P. McConnell, in the town of Fayetteville, Lincoln county, State of Tennessee, between the hours of 9 o'clock A. M. and 6 o'clock P. M. on this 25th day of February, A. D. 1830, James Fulton and Charles Boyles, witnesses a certain matter of controversy now depending in the said court between James White and others, securities of James King and William Trigg, executors of William King, deceased, plaintiffs, and the heirs and legal representatives of James King, deceased, and of William Trigg, deceased, defendants, who being first duly sworn on the Holy Evangelists of Almighty God, deposeth and saith:

Question 1st, by defendant McCall. Mr. Fulton will please state what he knows of the pecuniary circumstances of Mr. B. M. Garner, between the years 1819 and 1826.

Answer. I knew nothing about Mr. Garner until the fall of 1820; between the fall of 1820 and the spring of 1823, I collected some money from said Garner, by suit; and I think during that time William E. Kennedy, an attorney then living at Fayetteville, collected considerable sums from Garner by suit; but what amount was collected during the period above mentioned by Kennedy, myself, or others, I cannot say, but it amounted to several thousand dollars. Brice M. Garner was, as I believe, generally (tho' not universally) regarded as solvent, until some time in the spring or summer of 1823. And further this deponent saith not.

JAMES FULTON.

Question by defendant McCall to Mr. Boyles. Please state what you know of the solvency or insolvency of B. M. Garner, from 1819 to 1826?

Answer. I was well acquainted with Brice M. Garner before and since the time spoken of, and think he was solvent, and so generally considered, up to about the year 1823; since which time he has been, as I believe, considered as insolvent.

Question 2d. What is the probable amount paid by or made out of Mr. Garner, after 1819? State at what time, to whom, and for how much, said Garner sold his Brown's Ferry and Ditto's Landing, on the Tennessee river.

Answer. I cannot say with certainty what amount has been paid by Garner since 1819, but I think it has been very considerable. I think Garner sold Brown's Ferry, on Tennessee river, about the year 1821 or 1822, to John W. Telford or Joshua Cox, for about the sum of thirty-three or thirty-five thousand dollars; he sold Ditto's Landing, on Tennessee river, to Col. White, of Abingdon, Virginia, for twenty-thousand dollars, I think about the year 1820 or 1821.

Question by same. Please say if you know that Colonel White ever demanded payment of Mr. Garner of two notes due Saltville, by said Garner?

Answer. I know nothing certainly on the subject.

And further this deponent saith not.

C. BOYLES.

140.

Samuel E. Gilleland, another witness in behalf of the defendant, being brought before us in like manner, deposeth and saith:

Question by defendant McCall. Please state the amount of salt sold by your house in Fayetteville for Colonel James White during the years 1827, 1828, and 1829, and say what was its carriage from Ditto's Landing, and how payable.

We sold for White, and received in the years 1827 and 1828, one hundred and thirty-six barrels, and in the year 1829 we did not receive any salt from them; and it appears from our books that we paid one dollar carriage per barrel, which amount was taken out of the proceeds of the salt.

Question by same. During the abovesaid years, had Colonel White any other agency in Fayetteville than your house for selling salt? State the price of salt here during the last year by the barrel, and also the price at Nashville, and the carriage per cwt. from Nashville to this place?

I do not know of his having any other agent at this place for the above years; salt in this place for the year 1829 sold from one dollar thirty-seven and a half cents to one dollar fifty cents per bushel per barrel. We paid for salt at Nashville in the year 1829, one dollar per bushel, and got it hauled to this place for fifty cents per hundred pounds.

And further this deponent saith not.

S. E. GILLELAND.

STATE OF TENNESSEE, *Lincoln county.*

We, Robert Dickson and E. H. Fletcher, do certify that the foregoing depositions were taken before us at the time and place therein mentioned, and on the 25th day of February, 1830; and that the questions are in the handwriting of McCall, and the answers of the several witnesses are in their own handwriting; and that they were by us immediately sealed up without alteration.

ELLIOT H. FLETCHER, *J. P.*
R. DICKSON, *J. P.*

Received six dollars fees for taking the above depositions.

The following is a copy of the execution, and receipt therein, filed with the deposition of Harold Smyth, viz:

The Commonwealth of Virginia to the Sheriff of Washington county, greeting:

We command you, that of the goods and chattels of William King, deceased, in the hands of William Trigg, surviving executor of the said William King, to be administered, you cause to be made the sum of thirteen hundred and fifty-three pounds, with interest thereon, to be computed after the rate of six per cent. per annum, from the 2d day of July, 1810, till paid, which Pollock, Treadway, & Co., lately, in our superior court of law for the said county, have recovered against him for debt; also, the sum of four dollars and sixty-eight cents, which to the said Pollock, Treadway, & Co. in our said court, were adjudged for his costs in that suit expended, whereof the said William Trigg is convict, as appears to us of record, and that you have the same before the judge of our said supe ior court, at the court-house, the first day of the next term, to render unto the said Pollock, Treadway, & Co., of the debts and costs aforesaid. And have there then this writ.

Witness Andrew Russell, clerk of our said court, the 23d day of February, 1814, in the 38th year of the commonwealth.

ANDREW RUSSELL.

Endorsed—Received of Charles Tate the full amount of the within execution. July 6th, 1815.

L. L. HENDERSON, *Ass'e of Pollock, Treadway, & Co.*

Copies. Teste: J. E. BROWN, *C. C.*

McCALL & WIFE *vs.* WHITE, &c.

The following are copies of the bill and answers in the case of McCall & wife and Thomas King against James White and others:

To the honorable Allen Taylor, Chancellor of the Wythe district:

Humbly complaining, shew unto your honor your orators, Alexander McCall, and Rachel Mary Eliza, his wife, and Thomas King, that in the year 1808, William King, a resident in the county of Washington, being seized in fee simple of a saltwell of great value lying in that county, as well as a large quantity of land lying around it and elsewhere in Virginia and the adjoining States, and being possessed also of a very large personal property, consisting principally of mercantile capital in this and the adjoining States, departed this life, having first duly made and published his last will and testament, a copy of which, marked (A), is herewith filed, and exhibited as part of this bill; by which, amongst other things, he devised to Mary King, his widow, to his brother, James King, and his brother in law, William Trigg, jointly, or to any two of them who should accept of the devise, an estate in the said saltworks during the life of his said wife Mary, and also his mercantile capital in this and the adjoining States, incumbering the said devise with the charge of the payment of sundry large legacies to various persons. The said will was, soon after the death of said William King, duly admitted to record in the county court of Washington county, probate being duly taken thereof by the said William Trigg and James King, the executors therein named, Mary King (who has since intermarried with Francis Smith,) refusing to accept of the devises in her husband's will, and electing her right of dower in his estate, the said saltworks was carried on jointly by the said widow and the said devisees, King & Trigg. The said William King left at his death, as his heirs at law, his brother, James King, of the whole blood; the children of his sister, Elizabeth Mitchell, of the whole blood; such of the children and grandchildren of his sister, Nancy Findlay, of the whole blood, as are citizens of the United States; the children of his sister, Hannah Allen, of the half blood; and his brother, Samuel King, of the half blood; so that, according to the statute of descents of Virginia, the said James King was entitled, as heir at law of William King, to one-fourth part of his estate, subject to the devises contained in his will.

The said James King departed this life in November, 1809, leaving Sarah King his widow, (who has since intermarried with Thomas Claiborne,) William King, your orator Thomas, and your oratrix Rachel Mary Eliza, (who has recently intermarried with your orator Alexander,) his children and heirs at law.

The said William King, the elder, by his said will, made a further devise, in the words following, viz: "In case of having no children, I then leave and bequeath all my real estate, at the death of my wife, to William King,

141.

son of my brother James King, on condition of his marrying a daughter of William Trigg's, and my niece, Rachel, his wife, late Rachel Findlay, in trust for the eldest son or issue of said marriage; and in case such marriage should not take place, I leave and bequeath said estate to any child, giving preference to age, of said William and Rachel Trigg, that will marry a child of my brother James King, or of sister Elizabeth, wife of John Mitchell, and to their issue."

The said James King, before his death, duly made and published his last will and testament, which was soon after duly admitted to record in the county court of Washington county, a copy of which, marked B, is herewith filed and exhibited as a part of this bill; by which, among other things, he devised one-third part of his interest in the saltworks, during the life of Mary King, to his widow; one-third part to Charles S. Carson, his executor, to whom he confided, from his great reliance on his integrity and attachment to his family, the management of his said interest, as a compensation for his trouble in managing the same; and the remaining third part to his three children, with a further proviso, that if his son William took his brother's estate under the above related clause in his will, that he then should take no part of his estate; if not, that his estate, after sundry devises and legacies, should be equally divided between his said three children. The said Charles S. Carson died in 18 , having first duly made and published his last will and testament, which was duly admitted to record in the superior court of law of Washington county, by which he appointed Francis Smith, Andrew Russell, and Thomas Claiborne, his executors, the two former of whom have ceased to act as such, and the latter is therefore acting as well executor of James King's estate as of Charles S. Carson. Your orators are advised that, from the terms of James King's will, it was clearly the intention of the testator to give to Charles S. Carson the management of his interest in the saltworks during the life of the widow of William King, not merely in his character of executor, but as a special trustee, from his unbounded confidence in his perfect integrity, and his personal attachment to him and his family; hence he directed, in his will, that no security should be required of said Carson. That this being from its very nature a trust that could not be transferred, has not passed to the executors of said Carson, and that therefore the children of said King became entitled, at the death of Charles S. Carson, to that share of the profits of the saltworks which had been devised to him.

Your orators further state, that William King, the younger, has not complied with the condition of the devise to him, contained in the will of William King, the elder, and above recited, by marrying a daughter of William and Rachel Trigg, they having no such daughter; nor has any intermarriage taken place between the children of William and Rachel Trigg and of James King, or of Elizabeth Mitchell, nor any such now possible, the daughters of Elizabeth Mitchell being all married to strangers.

It is contended by William King, the younger, that he takes the whole estate of William King, the elder, discharged from the condition of the said devise, and he is now prosecuting that claim by suit. If that question ought to be determined in his favor, then, from the terms of his father's will, he would not be entitled to any part of his estate, and your orators would be therefore entitled to two-thirds of their father's interest in the saltworks during the life of William King's widow.

Your orators are, however, advised, that the latter opinion is according

to the decision of this court in the case of Findlay's children vs. King's heirs; that William King, the younger, cannot take as devisee under the clause in question; that the whole clause is void; that all that part of William King's real estate, not specifically devised, has descended to his heirs at law, and that the saltworks and their appurtenances will also descend to his heirs at law at the termination of the particular estate in them; that therefore your orator Thomas, and your oratrix Rachel Mary Eliza, are entitled to eight-eighteenths of the life estate in the saltworks devised to James King; and, as heirs at law of William King, they are, together, entitled to two-twelth parts of his estate, subject to the devises contained in his will.

William Trigg, who survived James King several years, departed this life in 1813, having first duly made and published his last will and testament, by which he appointed L. L. Henderson his executor, who thereby became executor of William King's estate; William Trigg left Rachel, his widow, now intermarried with Peter J. Branch, and William, Daniel, Connally, and Lilburn, his children and heirs at law.

From the death of William King until the year 1819, the saltworks were worked for the joint benefit of the widow and devisees of the life estate therein; the whole amount, however, of that share of the profits which accrued to James King's children, except perhaps a small sum, was applied to the payment of debts due from William King's estate. In the year 1819 the saltworks were rented to John Sanders for a term of five years, ending the 1st day of September, 1824, at the rate of $30,000 per annum. About the commencement of Sanders's lease a certain James White, of Washington county, contracted to take from Sanders 100,000 bushels of salt annually, at a dollar per bushel; the said White finding, after a short time, his said contract embarrassing and dangerous, particularly as he was exposed to a competition with Messrs. Francis and William C. Preston, who had just put a neighboring saltwell, of which they were the owners, in operation, determined, at all hazards, to effect a monopoly of salt in that part of the country; he therefore gave to Sanders a tract of land which cost him about $73,000 for the transfer of his lease of King's well, agreeing to pay the rent as it came due. A short time after effecting this contract, he rented from the Messrs. Prestons their well until the expiration of the lease of King's well, at the rate of $30,000 per annum, and as that is the only other saltwell in this part of the country, he thus succeeded in acquiring a monopoly of salt during that period. During the existence of this lease he manufactured immense quantities of salt from King's well, (it is supposed, indeed, that for some time the quantity exceeded 1,000 bushels a day,) without injuring the well or seeming to exhaust the water. About the time of the expiration of that lease, the said White, in furtherance of his plan of monopoly, purchased from Captain Francis Smith his wife's dower interest in the saltwell for her life, at the annual sum of $6,500; he also rented from Peter J. Branch the interest in the life estate in the saltworks belonging to the representatives of William Trigg, for the life of Mrs. Smith, for the sum of $6,000 annually, the said Branch having, in right of his wife and as guardian of William Trigg's children, the entire control of that interest; he also bought from Thomas Claiborne his wife's dower interest in Saltville; he also rented Gen. Preston's well; he also, on the 17th April, 1823, entered into a contract with William King, jr., by which he purchased, for the sum of $15,000, his interest as one of the heirs general of William King, and also one-half of his interest as sole devisee, for the additional

142.

sum of $35,000, binding himself to bring the necessary suits in William King's name, in prosecution of his claim as sole devisee of William King; to employ the necessary counsel, and to be at all the expense in prosecuting the said claim. The said parties made a further covenant, that they should each, in the mean time, be at liberty to purchase, at their joint expense, and for their joint benefit, the claims of the heirs at law of William King to his estate, for the lowest price they could; the said White binding himself to make the necessary advances of money on any such contracts which should be made. Your orators refer to a copy of said covenant, herewith exhibited, marked C, as a part of this bill. In pursuance of spirit of this agreement, the said White prevailed on your orator Thomas, when only about 18 years of age, by availing himself in this way of the influence of his brother William over him, to transfer to him his whole interest in the saltworks and as heir at law of William King for the paltry sum of 5,000. Of this sum your orator Thomas received from the said White the sum of , the said White retaining the residue in his hands until your orator Thomas should attain his age of 21 years and ratify the contract. Your orator Thomas has a short time ago arrived at his full age, and as he conceives his youth and inexperience to have been grossly imposed upon, he has altogether refused, and now refuses, to ratify the said contract, and prays that it may be adjudged null and void. The said White can shew no color of right, unless under his claim of monopoly, to retain possession of the interest of your orator Alexander in right of his wife; the interests of your orators are thus the only bar to the said White's complete success in his scheme of monopoly during the life of Mrs. Smith.

Some time before Sanders' lease had expired, the said James White and others, who were securities of Lilburn L. Henderson as executor of William Trigg, filed their bill in this court, alleging that the said Henderson has wasted the personal assets belonging to the estate of William King, that there were large outstanding debts due from that estate, and that the complainants were in great danger of suffering as the securities of said Henderson; they therefore pray that the proceeds of the saltworks, which would otherwise go to the representatives of James King and William Trigg, and which were chargeable in their hands, with the payment of debts due from William King's estate, should be applied to the payment of those debts. On their prayer, the representatives of James King and William Trigg were enjoined from receiving their portion of the rents of the saltworks, and the said White was appointed receiver of the same by this court, with directions to pay them over to the creditors of William King as they came into his hands. In that way all the rents of the saltworks accruing to the representatives of James King and William Trigg during the whole period of Sanders' lease, as well as the greater portion of a large fund in the hands of Captain Francis Smith, arising from the previous profits of the saltworks, have been retained in said White's hands, although not yet disbursed by him in payment of said debts. The said White has, since the expiration of Sanders' lease, retained possession, and still retains possession, of your orators' interest in the saltworks, refusing to deliver possesion to them or to any lessee of theirs; he has also retained in his hands as receiver the rents and profits of the saltworks from September, 1824, till the present time; these, in addition to various other sums which he had collected as receiver of William King's estate, are more than sufficient, as your orators believe, for the payment of all the debts due from the estate. Your

orators pray that the said White be compelled to account for their portion of the rents, issues, and profits of the sa tworks, since September, 1824, at their fair value, and after applying their equal proportion with the other representatives of James King and William Trigg to the payment of William King's debts, that he be directed to pay the residue over to them. Your orators contend that neither the present profits of the works, nor the rents received by Smith and Branch, furnish a fair standard of their value; at the time of the contracts between Smith and Branch and White, he induced each of them to believe, as your orators have been informed, that he had positively rented the interest of your orators in the saltworks, as well as of Thomas Claiborne and Thomas King, jr., and suggested the idea to them that he had them in some degree in his power, holding out the terrors of competition to them; that, under this persuasion, they each of them took a lower sum than they otherwise would have done. The contract made by said White with Peter J. Branch, is also liable to revocation as far as it relates to the children of William Trigg, as they respectively attain their age of 21 years. Since September, 1824, said White has lessened the quantity of salt manufactured at King's well perhaps one-half, so that its present product is no criterion of its value; the said White will himself sustain no injury by having diminished the quantity of salt manufactured at King's well, because he has a large share in the profits of other saltworks on Goose creek, in Kentucky, from which a large district of country in Tennessee, formerly supplied with salt from King's well, is now almost exclusively supplied, owing, no doubt, entirely to his own management. If, therefore, the said White was allowed to conduct the manufactory of salt as he pleased at King's well, and was to be charged only with your orators' share of the reduced profits, the loss would fall altogether on them, and would be a strong auxiliary to that regular system by which he has been laboring to acquire the exclusive control of the saltworks. Your orators are not apprized of any circumstance, at the present time, tending to diminish the value of the saltworks, and the said White's own conduct sufficiently evinces his high idea of their value. He refuses to deliver to your orators possession of their interests in the saltworks at this time, contending that he has the largest interest therein; that the well is indivisible in its nature; and that the court will therefore allow him to remain in exclusive possession, paying to your orators a reasonable rent on their share of the profits. Your orators cannot acquiesce in this unreasonable denial of their rights; they cannot perceive why it is not as easy to divide and apportion the water of the saltwell when drawn, as to divide the salt when manufactured, or its proceeds when sold; all that your orators claim is to be permitted to occupy a portion of the premises appurtenant to the saltwell, and to exercise the right of drawing from it their reasonable share of the water. They ask to be put in possession of their rights under the control of this court, and are willing to be laid under such terms as will prevent any injury to the well, being from the permanency of their interest, which they and said White feel on the subject. The well, when originally excavated, was supported at its sides by a ribbing of wood; this has given way for a considerable distance above and below the usual water mark in the well, and the earth has fallen in from its sides in large masses, so as to produce an immense cavity, which is supposed to be increasing every day, and though its increase is gradual, it threatens, at some distant day, to produce a falling in and destruction to the well. The said White, whilst he has been in sole pos-

143

session, has been applied to by your orators to resort to some means of supporting the sides of the well and preventing an enlargement of the cavity, which he utterly refuses to do, stating that his interest was too precarious to justify any expense in such repairs. Your orators conceive that they stand before this court upon at least as high grounds as Col. White; they cannot fear this court will direct their interests to remain subservient to a man directly opposed to them, and thus convert devisees and heirs at law into the mere vassals of a speculator and monopolist.

To the end, therefore, that the said James White, Francis Smith, and Mary his wife, Peter J. Branch. and Rachel his wife, William, Daniel, Connally, and Lilburn Trigg, Thomas Claiborne, and Sarah his wife, and William King, be made parties defendant to this bill, and be severally compelled to answer all and singular the allegations hereof as fully as if the same were again set out by way of interrogatories; that the said White be compelled to yield up to your orators possession of their interests in the saltworks, under such terms as this court will impose: that the said White be also compelled to account for their portion of the rents, issues, and profits of the saltworks, until such possession is yielded up; and that your honor will grant to your orators upon the premises such other and further relief as may be consistent with equity and suited to their case. May it please your honor to grant the commonwealth's writ of subpœna, directed, &c.

JOHNSTON, *for complainants.*

A copy. Teste,
J. E. Brown, *C. C.*

To the Honorable Allen Taylor, Judge of the superior court of chancery, holden at Wythe court-house:

The answer of James White to the bill exhibited against him and others in this honorable court by Alexander McCall and wife and Thomas King. This respondent, saving and reserving all manner of benefit of exception to the statement in the complainants' said bill of complaint, for answer thereto, or to so much thereof as he is advised to answer, he answereth and saith: That he does not deny or admit the various matters set forth in the said bill of complaint, in which he has no personal interest or direct agency, deeming them to be mere recitals in which he is not concerned; he will content himself, therefore, with answering such parts as are connected with his rights, or affect his own individual conduct. This respondent believes that, in the year 1819, a contract was entered into between Francis Smith, who had intermarried with the widow of William King, Thomas Claiborne, who had intermarried with the widow of James King, (who acted by his agent,) and, as this respondent has heard, the widow of William Trigg, who acted as well on her own behalf as guardian for her children, on the one part, and John and William Sanders of the other part, by which the latter agreed to rent the saltworks belonging to the estate of William King for the term of five years, at $30,000 per annum. Soon afterwards, or about the same time, this respondent entered into a contract with them to take 100,000 bushels of salt, which they should manufacture during each year their lease should continue, at one dollar per bushel. This respondent, during the first year, purchased out the lease of John and William Sanders for a sum exceeding $70,000, by which the first contract was extinguished; and he also rented the saltworks, the property of Francis Preston, from the

said Francis and his son William, at the rate of $30,000 per year, during the continuance of the lease obtained by the said John and William Sanders. The two last contracts were entered into as measures of self defence, to avoid the evils which the first contract, in its progress, threatened this respondent: the times were undergoing a radical revolution; the pecuniary concerns of the country became embarrassed, and competition had been raised which had not been expected. In all these arrangements this respondent then believed, and still believes, he was doing nothing but what the laws authorized him to do. He did not know, until he received the reprehensions set forth in the plaintiffs' bill, that he was doing aught which he was not strictly warranted in doing. He did the plaintiffs no injury, and why should they complain? Have they acquired any authority to become censors of the acts of others? This respondent has conferred none upon them, and he objects to such a power, particularly when coming from *such a quarter.*

This respondent admits that when necessity had surrounded him, he made such exertions as were calculated to extricate him, and as a prudent man, who was determined to save himself from injury, would make. He manufactured large quantities of salt, intended expressly, not only to supply the current consumption of the country which was supplied by it, but to provide a stock which should continue after the leases were expired; in doing this no moral or conventional duty was violated; this respondent was not restricted to any limited quantity, but his right to manufacture was coextensive with the capacity of the estate, and the capital at the command of the tenant. In April, 1823, this respondent entered into a contract with Thomas Claiborne, who had intermarried with the widow of James King, by which this respondent acquired all the interest which the wife of the said Thomas, as well as himself, had in the saltworks and the lands appertaining thereto, and the same was conveyed to the respondent by deed, herewith exhibited as a part of this answer, marked A; this respondent has since fully paid the purchase money. About the same time this respondent made an agreement with William King, son of James King, the terms of which will be seen in the deed, a copy of which is exhibited with the plaintiffs' bill.

The testator, James King, having provided by his will that his part of the saltworks should be placed "under the direction of his executor during the life of Mary King," and the said Thomas Claiborne being, in 1823, the only acting executor, this respondent entered into a negotiation with him to obtain the interest of the two younger children of James King, (the plaintiffs Rachel Mary Eliza and Thomas) his object was to pay an annuity during the life of Mrs. Smith for their parts; the said Claiborne agreed that this respondent should have their interests upon reasonable terms, to be paid for by way of annuity. This respondent stating that the saltworks were not as valuable as they had been, the said Claiborne said that this respondent should obtain the interest of Francis Smith and wife, and that belonging to the representatives of William Trigg, and that this respondent should have the interest before mentioned on reasonable terms. In pursuance of this agreement, this respondent accordingly afterwards entered into a contract with Francis Smith, by which he purchased out his interest in the saltworks during the continuance of the life estate, at the sum of $8,100 annually, including the hire of 20 grown male slaves; all which will more fully appear by the paper marked B, herewith exhibited as part of this answer. This respondent also, on the same day, contracted for the interest of

144.

the devisees of William Trigg with Peter Branch, who had intermarried with the widow of the said Trigg, and was guardian for his children, and for the whole interest this respondent is to pay $6,500 annually; this contract is set forth in the paper herewith exhibited, marked C. In making these contracts, this respondent was influenced by the belief that he had acquired the whole interest in the saltworks during the life of Mrs. Smith, which was of the utmost importance to him, inasmuch as it would not only prevent collision with some of those entitled, and avoid ruinous competition, but enable this respondent to dispose gradually of the large quantity of salt which he would probably have on hand at the termination of the lease under which he then held. Had this respondent believed that the competition now sought to be set up would arise, he most unquestionably would not have made those contracts on the terms he did.

The contracts of April, 1823, were made in Nashville, Tennessee, where the said Claiborne and the children of James King resided. Some time afterwards the said William King came to Abingdon, where this respondent resides, and informed this respondent that his brother Thomas wished to sell his interest in the saltworks, and that he had authorized him to make the contract with this respondent. This respondent inquired of the said William what sum his brother demanded for his interest, and was answered "$5,000;" this respondent said he would give that sum; whereupon the agreement was drawn by another person, and this respondent, at the request of the said William, advanced $500 in part of the purchase money. The agreement was afterwards signed by the said Thomas in Nashville, and was sent to Abingdon, where it had been signed by this respondent and the said William King, when it was drawn; it is herewith exhibited as part of this answer. The said Thomas King afterwards came to Abingdon, where he remained for some time, appearing well pleased with the contract; he drew money from time to time from this respondent in part of the purchase money, so that the whole sum amounts to one thousand hundred and dollars.

At the time of this contract the saltworks were in the possession of this respondent, as receiver of this honorable court, for the purpose of applying their profits to the payment of William King's debts, a considerable part of which remained unpaid. The part of the said Thomas, in the most favorable point of view in which it can be placed, amounted only to one-ninth of the whole saltworks; only to a twelfth, if William King participates in the two-thirds of his father's interest; and in case Charles Carson's representatives should succeed in enforcing their claim under James King's will, then the plaintiff Thomas is only entitled to one twenty-seventh part of the whole. The sum of $5,000 might be denominated "paltry," if the extent of the claim was as the plaintiffs suppose, and its donation certain; but these things were to be hazarded by the purchasers.

It is true that this respondent was appointed receiver by this honorable court in 1819, in the case stated in the plaintiffs' bill; he has received the profits of the saltworks from that period, and has reported the condition of the fund from time to time; he refers to the proceedings in that case as a part of this answer; they will shew how far the plaintiffs' allegations are supported by the facts. If on a final adjustment of the accounts there shall be any balance in the hands of this respondent, he is ready to pay it to such person as this honorable court may direct.

It is true that this respondent has an interest in the saltworks on Goose

creek, in Kentucky, but it is not true that it has tended to lessen his exertions to vend the salt manufactured at King's works; his interest on Goose creek is subordinate in its character, because, compared with the other, of far less value. It is true that the profits of the saltworks have been lessened, but not through the influence of the causes fancied by the plaintiffs; the real causes are the immense quantities of salt taken from the Kenawha saltworks and other places, which the improvement in steam navigation has enabled those dealing in that article to convey on low terms to every place accessible to it. The Goose creek saltworks (three-fourths of which are owned by other persons,) also place a considerable quantity into the market, which creates competition and lessens the sales; but these causes have tended to stimulate this respondent, and every means within his reach have been employed to countervail obstacles not created by him; so that it is utterly untrue that any diminution in the sales of salt from King's works "is owing to this respondent's management." It is true that this respondent has refused to permit the plaintiffs (whose joint interest is small compared with that owned by this respondent) to take possession as they wished, but it is not true that he refuses to account with them for any interest they may have in the profits; this respondent has always been willing to pay them (after the payment of the debts of William King) such sum as intelligent men should determine to be right, and he has offered to do so to the plaintiff McCall. He always did believe that what he agreed to pay to Captain Smith and Mr. Branch afforded a just standard of the value of the property, and until it can be shewn that these persons have sacrificed their interest, this respondent will continue to entertain the same belief.

It must be obvious to every person that the attempt of the plaintiffs to enter on the property of the saltworks and *take their part of the water*, is the invention of a superior *genius*, which deals in speculations in which practical affairs have no concern. How is it possible to effect such a purpose? The plaintiffs might only have their *proportion* of kettles, but they and their might waste the water and fuel at pleasure; they might use unusual exertions by increasing their hands and working at unusual times; this would produce inevitable collision, tending to strife and contest; besides, as a great deal more salt can be manufactured than can be sold, there must arise a rivalship tending to the injury and perhaps ruin of the parties; the unity of the concern must be destroyed, and nothing but confusion attend such proceedings; this respondent therefore resists the pretensions of the plaintiffs to be permitted to take possession. It is true that after the lease which had been taken by John and William Sanders expired, this respondent relaxed in his efforts to make salt; he had a large stock on hand, and to have continued the exertions used some time before would have accumulated it beyond reasonable bounds; after the stock had diminished this respondent renewed his former efforts, and has for some time continued them; but this respondent cannot see what interest the plaintiffs have in this matter, unless they want their proportion of salt made, which would compel this respondent to keep partnership accounts, a measure which he believes this honorable court will not compel him to adopt, when it is in its power to render complete justice otherwise. The plaintiffs complain that it is the object of this respondent to monopolize the whole property; they also complain that this respondent has obtained the interest of Francis Smith and Trigg's representatives under its value; to quiet these complaints, this respondent is willing to relinquish to them the benefit of his contracts with those persons imme-

143.

diately, if they will take the lease which this respondent obtained from Francis Preston for his saltworks at $11,000 per annum with the others, so that this respondent shall not be called on by the persons for the rent; or if the plaintiffs will not take Preston's lease, they may have the other as soon as that of Preston's shall expire, which will be in September, 1829. In either event, this respondent will agree that they may take possession and enter into competition with this respondent, and take the benefit according to the extent of their interest which they shall then have.

In making this proposition this respondent is well convinced that no benefit would result to either of the parties; on the contrary, he believes serious injury would follow the acceptance on the part of the plaintiffs; but this respondent obtained the said leases to avoid the evils and collisions which would follow separate possessions and separate operations; if these cannot be avoided, this respondent would be in a better situation if he had no rent to pay; that at present the plaintiffs, who seem to consider the situation of this respondent as very enviable, will then have it in their power to appreciate it duly by being placed in it themselves.

It is true that a large cavity has been caused in the saltwell by the falling in of the earth long before this respondent had any concern with the saltworks, perhaps fifteen or twenty years ago. This respondent does not believe it to be dangerous, unless the water should be kept low by excessive use; it being the opinion of many that the water supports it. This respondent verily believes that any attempts to close it by timbers would cause injury instead of benefit. The plaintiffs' *experience*, however, may enable them to understand the subject better; and as this respondent has a permanent interest in the well, he would be willing to receive instructions as to the mode by which the dreaded evil is to be avoided.

This respondent does not remember any such conversation as is stated in the bill to have taken place between the plaintiffs and him, relative to the said cavity, and the propriety of supporting the sides of the well; he believes no such conversation ever took place. He is certain that he never did say that his "interest was too precarious" to warrant the expense of providing for the safety of the well.

This respondent, further answering, saith, that the plaintiff Thomas, though of full age a considerable time, has never uttered a word since, manifesting his discontent with the agreement made between him and William King and this respondent, nor has he ever offered to repay the money received, or any part of it. This respondent conceives that he comes with an ill grace before this honorable court to reclaim his property without ever offering to pay the money received. So far as this respondent's conduct been from what it is charged to be—that he holds the plaintiffs' funds unjustly—that this respondent permitted the plaintiff, McCall, to draw of the funds of the saltworks the sum of 7,223 dollars, which is more than in any event can be due to him. This respondent herewith exhibits a paper executed by the said McCall, as evidence of the fact here stated. This respondent denying all fraud and injustice, prays to be hence dismissed with his costs.

D. SHEFFEY, *for defendant.*

WYTHE COUNTY, set.

This day came James White before me, the subscriber, a justice of the peace for said county, and made oath that the facts stated in the within an-

swer, so far as they are stated as of his own knowledge, are true, and so far as they are stated on the information of others, he believes them to be true. Given under my hand this 28th day of May, 1827.

JOHN JOHNSON, *J. P.*

A copy. Teste, J. E. BROWN, *C. C.*

To the honorable Allen Taylor, Judge of the superior court of chancery, holden at Wythe court-house:

The amended answer of James White to the bill of Alexander McCall and Thomas King, exhibited in this honorable court, filed by leave of the said court.

This respondent, by way of amendment to his former answer, begs leave to state that, in the month of February, 1823, this respondent being in Huntsville, in the State of Alabama, on business, a certain Thomas Claiborne, who was then the sole executor of James King, and had intermarried with his widow, came there with a view of entering into a contract with this respondent respecting the interest which he had in the saltworks in Washington county, Virginia, of which William King died seized. While there this respondent received a letter from him bearing date the 27th of February, 1824, (it ought to be 1823,) which this respondent herewith exhibits as part of this bill.

This respondent afterwards went to Nashville, at the instance of said Claiborne, where he made a contract with the said Claiborne for his interest in right of his wife. He also contracted with him for the remaining interest which the estate of James King had in the said saltworks, as stated in his original answer.

Since the filing of this respondent's answer to the original bill, a proposition has been made to this respondent to accept the offer made in this respondent's answer, that the plaintiffs might take the benefit of the leases which this respondent had obtained from Francis Preston, Francis Smith, and the representatives of William Trigg. This proposition, however, resulted in no arrangement. When the plaintiff, McCall, and this respondent came to enter into verbal explanations, the said McCall saw that before he could close the contract he must go to Tennessee to make the necessary arrangements. This respondent understood that he relied on getting his security, which it would be necessary for him to give to protect this respondent against the leases, has to be procured in that quarter. There was also a disagreement as it respected the compensation for the enjoyment of the plaintiffs' interest heretofore.

This respondent has always been of opinion that a competition in making and vending salt would be destructive of the interest of all parties. Should this honorable court herein be of a different opinion, this respondent is willing that the plaintiffs shall have the benefit of the leases obtained from Francis Preston, Francis Smith, and William Trigg's representatives, they entering into proper responsibilities to secure this respondent against his liability, and this respondent being secured in the actual enjoyment of these rights which he has purchased. This matter this respondent is willing shall be arranged by this honorable court.

This respondent repeats the statement in his original answer, that if he had not believed that he had actually acquired the control of the whole interest which the estate of James King had in the saltworks, so as to secure

him from the evils of conflicting operations, he never would have made the contracts with the said Francis Preston, Francis Smith, and the representatives of William Trigg.

This respondent prays to be hence dismissed.

Wythe county, sct:—This day came James White before me, the subscriber. a justice of the peace for said county, and made oath that the facts stated in the within answer are true, as he verily believes. Given under my hand this 25th October, 1828. SHEPHERD BROWN.

Copy. Teste, J. E. BROWN, *C. C.*

To the Honorable Allen Taylor, Judge of the superior court of chancery, holden at Wythe court-house:

The answer of Thomas Claiborne to the bill of complaint exhibited against him and others in this court by Alexander McCall and wife, and Thomas King.

This respondent, for answer to so much of said bill as he is advised is material for him to answer, saith: That James King, by his last will and testament, (as set out by the complainants in their bill,) after devising to his wife her dower in his estate, and the residue of said estate, except that devised to his executor, to his three children, appointed by said will Charles S. Carson his executor, giving him further, out of special trust and confidence in his integrity and attachment to his family, the entire control and management of his interest in Saltville, and devising to him one third of the profits of said interest as a remuneration for his trouble in managing the said interest. The said Carson took upon himself the burden of the executorship of James King's will, and managed the said interest in Saltville during his life. He departed this life in 1815, having first duly made and published his last will and testament, (a copy of which is herewith exhibited, marked AA, as part of this answer,) by which, after devising his property to his nephews and nieces, the children of his sister Jane Bekem, he appointed Francis Smith, Andrew Russell, and this respondent, executors of his said will.

On the 28th October, 1815, the said Smith and Russell took probate of said will in the superior court of law of Washington county, and continued to act as executors thereof until the 3d November, 1818, when this respondent qualified as executor of said will in said court. As soon as this respondent qualified as executor as aforesaid, the said Smith and Russell, in conformity with their previous resolution, determined to relieve themselves of the burden of said executorship, and accordingly concerted a plan with one of their securities, by which, on the 5th November, 1818, required counter-security of them in the superior court of law of Washington county, then in session, and on their failing to give such security, as had been previously arranged by them, the said court on that day deprived them of the office and powers of said executorship, so that this respondent became in that way sole executor of said Carson.

Your respondent refers to the copy of the record and proceedings of said court in the premises, annexed to the copy of said will, as part of this answer. When this respondent took upon himself the burden of the executorship of Carson's will, as he became thereby executor of James King's will, he at first adopted the opinion that he became in that way entitled to the control and management of James King's interest in Saltville, and he

accordingly assumed for some time the control and management of the same as Carson's executor, so far at least as to unite in a lease of the saltworks to James and William Sanders. His right to the said management was not, at that time, disputed, because James King's children were all under age, and because, as your respondent had married their mother, James King's widow, he was on that account interested in said estate of Saltville, and was in all respects the fittest person to manage the same. It was, therefore, immaterial at that time closely to examine in what right your respondent should assume the control of said interest. Before, however, any of James King's children arrived at their age of twenty-one years, this respondent and wife sold to James White the dower interest of his said interest in Saltville. After said sale it became important to inquire whether, as your respondent had parted with his wife's interest in Saltville, he was still entitled to control the interest of James King's children therein, as Charles Carson's executor; on that question considerable doubts had been about that time suggested. Your respondent, to satisfy himself on this subject, applied to the most eminent counsel in Virginia to advise him of the true construction of James King's will on this head. He was, by the said counsel, advised in writing, that, by the true construction of James King's will, the appointment of Carson to manage and control the said interest was not conferred on him in his mere character of executor, but was a special trust and appointment of a character entirely individual, and did not pass to Carson's executors; that, as the devise of one-third of the profits of said interest was evidently made to Carson as a remuneration for his trouble in managing the same, the said devise determined by his death. A copy of said opinion, marked BB, is herewith exhibited. Your respondent, on this advice and mature deliberation on it, came to the conclusion that this was the correct view of the subject, and he was fortified in the opinion by the fact that the said Russell and Smith had never, as Carson's executors, assumed the direction and control of said interest. Your respondent therefore abandoned all claim to the control and management of said interest, which he would not have done had he believed himself entitled to it, since, in that event, he would have been equally entitled to the one-third of said profits. It is proper, however, to add, that as your respondent did actually manage the interest for some time, and in a beneficial manner, as he believes, to the interest of James King's children, he has a claim against them for remuneration for said trouble, which he has no doubt of settling with them in a friendly way, and which claim it is not necessary to bring into this case.

As this respondent and his wife have long ago sold the dower right of his said wife in said interest, (reserving, however, the rents and profits of the same from that time until September, 1824, when the lease to Sanders would expire,) to the defendant, James White, who at that time stated to this respondent that he had then ample funds in his hands for the payment of all Wm. King's debts, he has, therefore, no interest in Saltville, except on account of said reservation, and the equitable consequences growing out of the representations of said White, made at that time to this respondent, and which then formed a material part of the consideration upon which said sale was made to said White. Respondent having answered all and singular the things contained in said bill, of which he is advised it is material for him to answer, prays hence to be dismissed, with his reasonable costs, as in duty, &c.

TH. CLAIBORNE.

STATE OF VIRGINIA, *Washington county, sct:* 147

This day personally appeared the above named Thomas Claiborne before me, one of the acting justices of the peace in and for the county and State aforesaid, and made oath that the matters and things as stated in the foregoing answer as of his own knowledge, are true, and those stated as on the information of others, he believes to be true.

Given under my hand and seal, at Abingdon, this 22d day of October, in the year 1828. TH. CLAIBORNE.

Sworn to and subscribed before me the date above.

P. J. BRANCH.

A copy. Teste, J. E. BROWN, *C. C.*

To the Honorable Allen Taylor, Judge of the superior court of chancery, holden at Wythe court-house:

The answer of William King to the bill of complaint exhibited in this court by Alexander McCall and Rachel Mary Eliza, his wife, and Thomas King, against James White, this respondent, and others.

This respondent, for answer to so much of said bill as he is advised it is material for him to answer, answereth and saith: That he admits the devises contained in the wills of William King and this respondent's father, James King, to be truly recited in the complainant's bill; he also admits that he is now prosecuting his claim as sole devisee of William King in the federal courts. He admits that if he should succeed in enforcing said claim, he will not be entitled, by the provisions of his father, James King's will, to any portion of his estate; and that, if the question under said devise should be decided against him, he will be entitled to his equal portion of his father's estate, including his interest in the saltworks during Mrs Smith's life, with each of the complainants, and to one-twelfth part of William King's real estate after the death of Mrs. Smith. Your respondent admits that, while he was under the age of twenty-one years, he entered into the agreement with James White, a copy of which is exhibited in the complainants' bill, and while he continued within the said age of twenty-one years, that he bought out, under the said agreement with the said James White, the interest of the complainant, his brother Thomas, in his father's estate in the saltworks during the life of Mrs. Smith, and also his interest in the real estate of William King, for the sum of $5,000. Your respondent, however, states that, as he contends that his contract with the said James White for the purpose of annulling the same, he does not contend for the validity of the purchase made from his brother Thomas.

This respondent admits that the said contract was made with his said brother Thomas when he was several years within his age of twenty-one years, and that he has not in any way, since he has attained his full age, ratified the same. Whatever, therefore, may be the event of the contest between this respondent and said White, your respondent does not and will not contend that his brother Thomas is to be bound by the contract made with him.

Your respondent, having fully answered, prays to be hence dismissed with his costs, &c.

WM. KING.

STATE OF TENNESSEE, *Davidson county, to wit:*

This day William King made oath before me, the undersigned justice of the peace for said county, that the statements contained in the foregoing answer, made on his own knowledge, are true, and that the statements made on the information of others he believes to be true.

Given under my hand and seal this fifteenth day of July, 1828.

W. B. LEWIS,
Justice of the Peace. [SEAL.]

A copy. Teste, J. E. BROWN, *C. C.*

VIRGINIA, *Washington county, to wit:*

The affidavit of John M. Ropp, a witness for the plaintiffs, taken pursuant to the annexed notice, before the undersigned, a justice of the peace for said county, to be read in a cause depending in the superior court of chancery, holden at Wythe court-house, wherein Alexander McCall and wife and Thomas King are plaintiffs, and James White, defendant. This affiant being duly sworn, saith:

Question by plaintiff. How much salt was manufactured at Saltville, and sold or carried away in each year, from the 1st September, 1824, till the 1st September, 1828?

Answer. I cannot say, with any certainty, how much salt was manufactured in each year. The only information respecting the amount sold or carried away "in each year," is by reference to the salt books, from which it appears that the following amounts were sold or carried away, viz:

From 1st September,	1824,	to 1st September,	1825,	109,820		bushels.
Do.	do.	1825, to	do.	1826,	64,767 $\frac{3}{10}$	do.
Do.	do.	1826, to	do.	1827,	63,414 $\frac{1}{10}$	do.
Do.	do.	1827, to	do.	1828,	98,767 $\frac{2}{10}$	do.

Question by same. How much salt was manufactured at Saltville and sold or carried away, from 1st September, 1828, till 1st March, 1829?

Answer. I can answer only as to the probable amount sent away from the salt-house in that time, which I suppose to be something upwards of seventy-five thousand bushels The salt book shows seventy-five thousand seven hundred and thirty-eight bushels.

Question by same. How much blocking or rock salt is usually made at Saltville annually, and at what price does it sell?

Answer. I can form no correct idea as to the quantity made annually; until lately, what rock salt was sold, was sold at one dollar cash per measured bushel. It is now sold for one dollar for eighty pounds.

J. M. ROPP.

I, Tobias Smith, a justice of the peace for the county of Washington aforesaid, certify that the foregoing affidavit of John M. Ropp was taken, subscribed, and sworn to, at Saltville, before me, on this 15th April, 1829.

Given under my hand and seal.

TOBIAS SMITH. [SEAL.]

A copy. Teste, J. E. BROWN, *C. C.*

The following is a copy of the record, James White against William Heiskell and wife:

To the honorable John Brown, Chancellor of the Wythe district:

The bill of complaint of James White, of the county of Washington, represents, that in the year 1808, a certain William King departed this life,

148.

possessed of a very large property, real and personal, after having duly made and published his last will and testament, a copy of which is herewith exhibited as part of this bill. By his will, the testator devised to his nieces, Betsy Mitchell and Betsy Findlay, a pecuniary legacy of ten thousand dollars. It is believed that the testator intended to devise to each of his said nieces the sum of ten thousand dollars, and that they will be each entitled to that sum under the will aforesaid, though it is doubtful whether they will not be restricted to ten thousand dollars between them. That afterwards the said Betsy Mitchell intermarried with William Heiskell, of Lee county, who, in March, 1814, after the marriage, sold $5,000 of the legacy aforesaid to Lilburn L. Henderson, then executor of the will of the said King, as appears by the written agreement between the parties, (marked A and B), and herewith exhibited as part of this bill. That afterwards the said Heiskell and wife, who is one of the heirs at law of William King, deceased, sold to said Henderson, which she had in the estate of said King, excepting only the transfer of 5,000 dollars of the legacy aforesaid; and afterwards, viz. on the 30th day of October, 1815, conveyed the same by deed, she having been privily examined as the law directs; which (marked C) is herewith exhibited as part of this bill. That afterwards the said Henderson, being largely indebted to Francis Smith, Esq. procured William P. Thompson to become his security in notes executed to said Smith, in the sum of $——. That afterwards, the said Henderson failing in business, and becoming insolvent, the said Thompson paid to said Smith a part of this debt, amounting to about 20,000 dollars, and took in several of the notes aforesaid, three of which, marked with the numbers 1, 2, and 3, are herewith exhibited as part of this bill. To secure the said Thompson, as far as practicable, for thus paying money as his security, the said Henderson executed to Benjamin Estill a deed of trust, conveying considerable property, amongst which is the property derived by the sale and conveyance of Heiskell and wife to the said Henderson. Afterwards, to wit, on the 30th day of September, 1820, the said Thompson, by deed, (marked D), and herewith exhibited as part of this bill, transferred the said bonds, and all his interest in said deed of trust, to your orator; he also transferred the said deed by an endorsement thereon, which deed, (marked E), with its endorsement, your orator herewith exhibits as part of his bill. Your orator herewith exhibits his notes executed to said Thompson, in proof of his having paid him that amount; being the sum agreed to be paid for the said Thompson's transfer of the bonds and deed of trust aforesaid. The orator being advised that the conveyance made by Heiskell and wife would prove inoperative in consequence of the infancy of the said Betsy Heiskell when the same was executed, applied to Heiskell after his wife attained full age to have the conveyance made to him, pursuant to the several contracts aforesaid; but the said Heiskell refused, alleging that he was defrauded by the said Henderson and his partners in the several sales aforesaid. Your orator has understood and believes that this is a mere pretence to get rid of a bargain which he now thinks disadvantageous, though being a poor man in want of funds when he made the several contracts aforesaid, he then thought them desirable; and your orator has been informed and believes, that these contracts with Henderson were entered into at the pressing solicitation of the said Heiskell, as appears by his written propositions for a contract, marked (F), and herewith exhibited as part of this bill. Being unwilling to enter into litigation, your orator, believing himself entitled, either to the property and money contracted to be conveyed, or the money paid by Henderson therefor, which your

orator charges to have been the sum of $——, as the several contracts exhibited will show, offered the said Heiskell his choice, to pay the money and interests received from Henderson, under the contract aforesaid, or to convey the property according to agreement; but the said Heiskell will do neither the one nor the other, and refuses to do any thing in the business, or to give your orator any promise or satisfaction in relation to it. Your orator understands that a certain Peter Mayo, of the town of Abingdon, and Alexander Fulton, of the county of Henrico, were the partners of the said Henderson in the several contracts made between Henderson and Heiskell; and on application to Mr. Mayo, he, for himself and his partner, Alexander Fulton, made his deed of release of all their interest in the said purchases from Heiskell and wife, which deed, (marked G), is herewith exhibited as part of this bill. It is believed that many of the devises in the will of said King are too remote and contingent to take effect, and that a considerable portion of his estate is therefore undevised, which will descend to his heirs, of which the said Betsy Heiskell is one; therefore the said Heiskell wishes to set aside the several contracts aforesaid for fraud, though fairly made, as your orator is informed and believes. When these contracts were made, there were many debts due from William King to his creditors, and it was for a long time doubtful whether his estate would be able to pay them; and it was confidently believed that the real estate of the testator, including the saltworks, would have to be sold, for the purpose of paying those debts and the legacies; hence the legacy aforesaid, and the interest of the heirs in the said estate, were uncertain and doubtful, and your orator charges, that in the uncertain state of the business, no person would have given as much for the interest purchased as the said Henderson gave; your orator charges, that about that time, the personal estate of the said William King was exhausted in the payment of his debts, and that suits were brought by the creditors to subject the real estate. Your orator, though he offered said Heiskell his election, in order to avoid a law suit, yet as he did not accept the proposition or make his election, he considers that he ought not now to be allowed to make it; and as the several contracts and purchases have been fair, your orator asks their specific execution. Your orator has been informed, and believes, that previous to the transfer of the said deed of trust to him, the said Heiskell, who resides in Lee county, Virginia, being informed that the deed made by himself and wife was inoperative on account of his wife's infancy when the same was made, at the solicitation of L. L. Henderson, had another deed of the same effect and kind properly executed, after his wife attained full age, which was delivered to him by his wife Betsy, to be delivered to Henderson by him, and brought to Abingdon for the purpose of delivering it to said Henderson; but on his arrival at Abingdon, he obtained information, as he said, which determined him not to deliver the said deed, but to seek to set it aside on some pretence unknown to your orator.

The prayer, therefore, of your orator is, that the said William Heiskell and Betsy his wife, Peter Mayo and Alexander Fulton, may be made parties defendant hereto, and fully and truly answer the same on oath. That the said Heiskell be compelled to deliver to your orator the said deed, or to have a deed for the said property properly executed to your orator. That the said agreements made with said Henderson be specifically executed, and that such other and further relief in the premises be extended to your orator, as to equity belongs, and his case requires. May it please your honor to grant unto your orator the commonwealth's writ of subpœna, directed, &c.

ESTILL, *P. Q.*

149.

A.

Memorandum of an agreement between William Heiskell and L. L. Henderson.

Heiskell agrees to transfer to said Henderson his legacy due from the estate of William King, for the benefit of his wife, formerly Eliza Mitchell, amounting to 5,000 dollars, due 18 months hence; said Heiskell agrees to transfer the same to Henderson, at a discount of 1,500 dollars on the amount, the balance to be paid to said Heiskell; five hundred in cash when he calls for the same; 2,086 dollars amount assumed to said Henderson by said Heiskell, contracted by Heiskell and Mitchell in the purchase of goods; the balance, say 1000 dollars, in goods on demand, at an advance of 25 per ct.; which the said Heiskell agrees to transfer to said Henderson in due form when called on.

WM. HEISKELL.

Atteste: WM. D. CRAIG.

B.

This indenture, made this eighth day of March, in the year of eighteen hundred and fourteen, between L. L. Henderson, of the county of Washington, and William Heiskell, of the county of Lee, and William D. Craig, of the first place, all of the State of Virginia: Whereas William Heiskell, aforesaid hath, by deed bearing equal date with agreement, bargained, sold, and transferred to L. L. Henderson aforesaid, a certain interest in the estate of William King, deceased, to wit: a legacy left by the said King, in his last will and testament, to one Eliza Mitchell, now Eliza Heiskell, daughter of John Mitchell, amounting to the sum of five thousand dollars, with whom the above recited William Heiskell hath lately intermarried, and by virtue of which he, the said Heiskell, thinks himself legally authorized to transfer the interest aforesaid, and the said Henderson being doubtful whether the said Heiskell is so authorized, and also being doubtful whether the said Eliza Mitchell, now E. Heiskell, should die previous to her attaining the age of eighteen years, from a view of the will, the legacy so granted by the said William King, deceased, to the said Eliza or Betsy, would not lapse, and the said Heiskell being disposed to quiet the fears of the said Henderson, and to secure him against the happening of such an event as far as possible, hath covenanted, and by these presents, together with William D. Craig aforesaid, hath agreed, that for and in consideration of the sum of five thousand dollars, as already expressed by the deed of transfer aforesaid, that they the said Heiskell and Craig will, if required by the said Henderson, in a reasonable time after due notice thereof, procure for him, the said Henderson, a legal and formal relinquishment of the said Betsy's interest in and to the legacy aforesaid from under his hand or in such manner as said Henderson shall request; and further, the said Heiskell and Craig, on their parts, covenant and agree, that should the said Betsy die under the age of eighteen, (it being understood by the parties that at that period she will be legally vested with a right to demand an interest to the aforesaid amount in the said estate, by virtue of the will aforesaid,) or before she should be legally authorized to claim as aforesaid an interest in the said estate, that then and in that case, the said Heiskell and Craig covenant and agree, that they will refund to the said Henderson the sum of five thousand dollars, hereby acknowledged to have been received in consideration of the transfer afore-

said mentioned; which sum of five thousand dollars they bind themselves, their heirs, executors, and administrators, to pay to said Henderson, or legal representatives, at the time the legacy would have been payable had the said Betsy survived or lived to the age of eighteen; and if it should be ascertained that the said Heiskell, notwithstanding the death of his wife, as before mentioned, will be entitled to recover the legacy aforesaid, then the said Henderson doth covenant and agree, that he will wait till the event of a suit to be instituted by the said Heiskell for the recovery of the same shall be ascertained, before he, the said Henderson, takes any measures to compel the payment of the same; and the said Heiskell doth further covenant and agree, that on the happening of the event aforesaid, that he will consult with gentlemen best learned in the law in Virginia, and if advised to prosecute suit for the purpose of recovering the legacy aforesaid, that he will do so with all convenient speed, and prosecute the same to judgment with diligence; otherwise, that he will refund the money aforesaid, without waiting the event of a suit. And these presents further witness, that the said Heiskell, as well for himself as wife, reserves to himself all and other advantages that may accrue to them by the legacy aforesaid, on a legal construction of the said will over and above the five thousand dollars already transferred, and any interest that may accrue on the same; the said Heiskell in an express manner hereby repeating, that should it appear by legal construction of the said will, that the said Betsy, his wife, is entitled to a greater interest than 5,000 dollars aforesaid, together with any interest that may have accrued on it before payment, that the said Heiskell expressly reserves it, and does not mean by these presents to convey it. And it is hereby further coyenanted and agreed on by the said parties, and in particular by the said Henderson, that the said Heiskell and Craig do not guaranty the solvency of the estate of William King, deceased, and its competency to pay the said legacy of 5,000 dollars, but should it be insufficient to pay the same, the said Henderson does not hold the said Heiskell and Craig responsible for the same, and takes on himself, the said Henderson, the risk of the insolvency of the said estate, holding said Heiskell responsible only to guaranty the said Betsy's life till she shall attain the age of eighteen; and in case of her death previous to that time, then and in that case the said Heiskell and Craig are to refund as aforesaid, without interest on the same. And the said Heiskell and Craig and Henderson do mutually bind themselves one to the other, their heirs, executors, and administrators, for the true and perfect performance of these several covenants, and the promises as aforesaid, in the penal sum of ten thousand dollars. In witness whereof they have severally hereunto set their hands, and affixed their seals, the day and year above written. The above interlineation from the word "guaranty" to the word "same," inclusive, made before signed by the parties.

L. L. HENDERSON, [SEAL.]
WM. HEISKELL, [SEAL.]
WM. D. CRAIG, [SEAL.]

Teste: JAMES MORRIS,
WM. D. NEILSON.

C.

This indenture, made the thirtieth day of October, in the year of our Lord one thousand eight hundred and fifteen, between Lilburn L. Henderson, of the county of Washington, State of Virginia, of the one part, and William Heiskell and Elizabeth his wife, of the county of Lee, of the other

150.

part: Whereas William King, deceased, did, in and by his last will and testament, in writing, bearing date the third day of March, in the year of our Lord one thousand eight hundred and six, did, among other matters and things therein contained, give and bequeath to Elizabeth Mitchell, (daughter of John Mitchell, of Lee county,) now Elizabeth Heiskell, the sum of eleven thousand dollars; and whereas, also, the said Elizabeth, now Elizabeth Heiskell, is, by virtue of her relationship to the said William King, deceased, one of the legal representatives of the said William King, and as such may now or hereafter become entitled to a distributive proportion of his estate, real, personal, or mixed, to be claimed either by herself or her said husband, William Heiskell: Now this indenture witnesseth, that the said William Heiskell and Elizabeth Heiskell his wife, for and in consideration of the sum of five thousand dollars to them in hand paid at the signing hereof, doth hereby grant, convey, assign over, and transfer, to the said Lilburn L. Henderson, all the right, title, interest, and property which they, the said William Heiskell and Elizabeth Heiskell his wife, may now be entitled to under the will of the said William King, reserving nevertheless the transfer heretofore made to Lilburn L. Henderson, of five thousand dollars, and also all right, title, interest, or property, real, personal, or mixed, that may hereafter accrue to the said William Heiskell and Elizabeth Heiskell, as the devisees, legatees, or legal representatives of said King, and all manner of interest arising or accruing to them or either of them, severally or jointly, of every description whatever, whether legal or equitable, from and under the estate of said William King, deceased, and all such right, title, or interest, as will accrue to her at the age of twenty-one years: to have and to hold the said title, interest, and property, real, personal, or mixed, of the said William Heiskell, and his said wife, hereby intended to be assigned and transferred unto the said Lilburn L. Henderson, his executors, administrators, and assigns, to be by him of them held and enjoyed, to their only proper use and benefit, without responsibility to him, the said Heiskell or his wife, their heirs, executors, administrators, or assigns. And the better to enable the said Henderson, his executors, administrators, or assigns, to recover and receive of the said estate the interest and advantages aforesaid, arising from the estate aforesaid, they, the said William Heiskell and Elizabeth his wife, hath made, ordained, constituted, and appointed, and by these presents do make, constitute, and appoint, the said Lilburn L. Henderson, his executors, administrators, or assigns, their true and lawful attorney and attorneys, irrevocably, in their name and stead, or in the name of the said Henderson, his executors, administrators, or assigns, and to and for the proper use and behoof of him, the said Henderson, his executors, administrators, or assigns, or in the name of one or both of them, as the case may be, or in the name of the survivors of them, as the case may require, to ask, demand, receive, and sue for, all and any interest which they may be entitled to in any way whatsoever, under the will aforesaid, and for the same, when recovered or received, to make acquittances and discharges; and further to do all and every such act or acts which may be requisite for the recovery of the same, as they, the said William and his wife, might or could do in their own proper persons if these presents had not been made; they the said William and his wife hereby granting to the said Henderson, his executors, administrators, or assigns, full and absolute power in the premises, and hereby satisfying all such acts as by him shall be deemed necessary in the premises, provided the same be done at the proper cost and

charge of the said Henderson, his executors, administrators, or assigns. And the said William Heiskell and Elizabeth his wife, do hereby warrant and defend the powers of the said William and Elizabeth in the premises granted, against the claim or claims of all and every person or persons whatsoever, reserving nevertheless the sum of five thousand dollars already mentioned, and conveyed to said Lilburn L. Henderson. It is expressly understood that the said Heiskell and wife are not to be responsible any further than for a perfect transfer of all right, title, and interest to the aforesaid estate of William King, that does now or would hereafter accrue to the said Heiskell and wife, or either of them, on Elizabeth Heiskell becoming twenty-one years.

In testimony whereof, we have hereunto set our hands and affixed our seals, in Abingdon, the day and date before mentioned.

WM. HEISKELL, [SEAL.]
ELIZABETH HEISKELL, [SEAL.]

LEE COUNTY, *to wit:*

We, Hiram Craig and John Fulkerson, magistrates of the said county, do hereby certify, that William Heiskell, party to the within conveyance, hath duly acknowledged the same before us, on the 18th day of November, in the year 1815, and desired us to certify the said acknowledgment to the clerk of the county court of Washington, in order that the said conveyance may be recorded. Witness our hands and seals.

HIRAM CRAIG. [SEAL.]
JOHN FULKERSON. [SEAL.]

LEE COUNTY, *to wit:*

We, Hiram Craig and John Fulkerson, justices of the peace in the county aforesaid, in the State of Virginia, do hereby certify, that Elizabeth Heiskell, the wife of William Heiskell, parties to a certain deed for the conveyance of real, personal and mixed estate, to Lilburn L. Henderson, bearing date the 30th day of October, 1815, and hereto annexed, personally appeared before us in our county aforesaid, and being examined by us privily and apart from her husband, and having the deed aforesaid fully explained to her, she, the said Elizabeth Heiskell, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands and seals this 18th day of November, 1815.

HIRAM CRAIG. [SEAL.]
JOHN FULKERSON. [SEAL.]

(1.)

Know all men by these presents, that we, Lilburn L. Henderson and William P. Thompson, are held and firmly bound to Francis Smith in the sum of ten thousand dollars, good and lawful money of the United States of America; to which payment, well and truly to be made to the said Francis Smith or his legal representatives, we bind ourselves and every of us, our and every of our heirs and legal representatives, jointly and severally, firmly by these presents; as witness our hands and seals this 23d day of October, 1817.

The condition of the above obligation is such, that whereas the above bound Lilburn L. Henderson is indebted to the said Francis Smith in the sum of five thousand dollars: Now if the said Lilburn L. Henderson and

157.

William P. Thompson shall well and truly pay to the said Francis Smith or his legal representatives the said sum of five thousand dollars on or before the 23d day of October, 1821, with legal interest thereon from the 23d day of October, 1819, till paid, then the above obligation to be void, else to remain in full force and virtue.

L. L. HENDERSON. [SEAL.]
W. P. THOMPSON. [SEAL.]

Teste, JOSEPH MCCLELLAND.

(2.)

Know all men by these presents, that we, Lilburn L. Henderson and William P. Thompson, are held and firmly bound to Francis Smith in the sum of ten thousand dollars, good and lawful money of the United States of America; to the payment well and truly to be made to the said Francis Smith, or his legal representatives, we bind ourselves and every of us, our and every of our heirs and legal representatives, jointly and severally, firmly by these presents; as witness our hands and seals this 23d day of October, 1817.

The condition of the above obligation is such, that whereas the above bound, Lilburn L. Henderson is justly indebted to the said Francis Smith in the sum of five thousand dollars: Now if the said Lilburn L. Henderson and William P. Thompson shall well and truly pay to the said Francis Smith, or to his legal representatives, the said sum of five thousand dollars on or before the 23d day of October, 1822, with interest from the 23d day of October, 1819, then the above obligation to be void, else to remain in full force and virtue.

L. L. HENDERSON. [SEAL.]
WM. P. THOMPSON. [SEAL.]

Teste, JOSEPH MCCLELLAND.

(3.)

Know all men by these presents, that we, Lilburn L. Henderson and William P. Thompson, are held and firmly bound to Francis Smith in the sum of ten thousand dollars, good and lawful money of the United States of America; to which payment well and truly to be made to the said Francis Smith, or his legal representatives, we bind ourselves and every of us, our and every of our heirs and legal representatives, jointly and severally, firmly by these presents; as witness our hands and seals this 23d day of October, 1817.

The condition of the above obligation is such, that whereas the above bound Lilburn L. Henderson is justly indebted to the said Francis Smith in the sum of five thousand dollars: Now if the said Lilburn L. Henderson and W. P. Thompson shall well and truly pay to the said Francis Smith, or to his legal representatives, the said sum of five thousand dollars on or before the twenty-third day of October, one thouaand eight hundred and twenty-three, with interest from the twenty-third of October, 1819, then the above obligation to be void, else to remain in full force and virtue.

L. L. HENDERSON. [SEAL.]
W. P. THOMPSON. [SEAL.]

Teste, JOSEPH MCCLELLAND.

(D.)

Article of agreement made and concluded upon this 30th day of September, one thousand eight hundred and twenty, between William P. Thompson, of the county of Washington and State of Virginia, of the one part, and James White, of the same county and State, of the other part, witnesseth, that the said William P. Thompson, for and in consideration of the sum of three thousand five hundred dollars in hand paid, hath this day granted, bargained and sold to the said James White and his heirs, for ever, one bond in the hands of Francis Preston on Lilburn L. Henderson for five thousand dollars, and due the 23d day of October, one thousand eight hundred and twenty, and subject to the said Francis Preston for two thousand seven hundred and thirty-eight dollars and sixty-eight cents; and three other bonds on the said Lilburn L. Henderson for five thousand dollars each, and severally due on the 23d of October, 1821, '22 and '23, which bonds are entitled to credits by debts owing by the above named Wm. P. Thompson to the said Lilburn L. Henderson not exceeding three thousand three hundred dollars; also for the amount of the sale made by the executors of the said Lilburn L. Henderson of his property, for the benefit of the said William P. Thompson, of three thousand three hundred dollars, or thereabouts; which said bonds were severally executed by the said Lilburn L. Henderson to Francis Smith, with the said William P. Thompson as security, and are now transferred to the said James White, with express understanding that the said William P. Thompson is not bound as the assigner of the said bonds; and the said William P. Thompson hereby transfers and assigns to the said James White all the benefit, right, and interest, derived and accruing to him, the said William P. Thompson, under a deed of trust executed by the above named Lilburn L. Henderson to the said William P. Thompson to secure and save harmless the said William P. Thompson in his securityship in the above referred to bonds; and which deed of trust is of record in the county court of Washington, and dated on the 9th day of November, 1819.

Witness our hands and seals the day and date first above written.

WM. P. THOMPSON. [SEAL.]
JAMES WHITE. [SEAL.]

Teste, HAROLD SMYTH,
JOHN H. MITCHELL.

(E.)

This indenture, made this ninth day of November, in the year of our Lord one thousand eight hundred and nineteen, between Lilburn L. Henderson, of the county of Washington, and State of Virginia, of the one part, and Benjamin Estill, of said county and State, of the other part, witnesseth, that the said Lilburn L. Henderson, for and in consideration of the sum of twenty-five thousand dollars, to him in hand paid, the receipt whereof is hereby acknowledged, doth grant, bargain, and sell, unto the said Benjamin Estill, and his heirs, for ever, two one-half lots and houses in the town of Abingdon, known by the name of the Longly property, and on which he lately resided; also one other lot, being the dwelling house of said Henderson, and which he purchased of G. T. Conn and F. Smith; also one other lot and house adjoining the property of Jonathan Smith and the heirs of Connally Findlay; also his mill, with the lands around, adjoining the town of Abingdon; also one other mill, three miles south of Abingdon,

formerly owned by Connally Findlay, deceased; also the bonds, notes, &c. owing by Thompson to said Henderson; also the following slaves, to wit, Joe, Tom, Sally, and her child, Patience, two children, Patsey, Overton, and Bob; also three hundred acres of land in the county of Washington, adjoining the lands of Miller and Carpenter, and all my lands in the State of Kentucky; and also my interest in the purchase I made of William Heiskell and wife in the estate of William King, both real and personal, with all the appurtenances; to have and to hold the tracts or parcels of land, and other property, with all their appurtenances, and slaves, unto the said Benjamin Estill, and his heirs, to the sole use and behoof of him, the said Benjamin Estill, and his heirs for ever. And the said Lilburn L. Henderson, for himself, and his heirs, doth covenant with the said Benjamin Estill and his heirs, that he, the said Lilburn L. Henderson, and his heirs, the said tracts or parcels of land, and slaves, and other property, with all their appurtenances, unto the said Benjamin Estill, and his heirs, against the claims of all persons whomsoever shall warrant and will for ever defend: In trust, nevertheless, that if the said Lilburn L. Henderson, or his heirs, shall well and truly pay, or cause to be paid, unto Francis Smith, Esq , the just and full sum of five thousand dollars, with interest, if any shall accrue, per annum, according to the stipulations of four bonds of five thousand dollars each, heretofore executed by the said Lilburn L. Henderson, with William P. Thompson. his security, to the said Francis Smith, and for whose benefit and security, to wit, the said Thompson's, this indenture is executed, which is justly due and owing to said Smith, together with the expense of drawing and recording this indenture, within the times expressed in said bonds, then, and in that case, this indenture, and every part thereof, shall be null and void; and in further trust, that if the above named Lilburn L. Henderson shall not, on or before the several days at which said bonds become due and payable, well and truly pay, or cause to be paid, to the said Francis Smith, or his legal representatives, the said sums of money contained in said bonds, as they severally become due and payable, together with the expense of drawing and recording this indenture, then, and in that case, it shall be lawful for the said Benjamin Estill, the trustee, or his heirs, executors, or administrators, to proceed to sell the above described tracts or parcels of land, and slaves, and other property, and interest in property, or so much thereof as shall be sufficient to raise whatever may be then due to the said Francis Smith, as the said bonds severally become due and payable, and the expense of drawing and recording this indenture, at public sale, to the highest bidder, for ready money, before the front door of the court-house in the town of Abingdon, after having given at least twenty days' public notice of the time and place of sale, by putting up an advertisement for that purpose, for that space of time, at the front door of the court-house of the county of Washington, and at such other public place as the said Benjamin Estill, his heirs, executors, or administrators shall think proper, and out of the proceeds of the said sale to pay to the said Francis Smith, or his legal representatives, whatever may be due to him of the debts aforesaid, with the interest thereon, together with the expense of drawing and recording this indenture, the expenses of sale, and six per cent. to the trustee for his trouble in executing this trust; and the overplus, if any, to be paid to the said Lilburn L. Henderson, or his legal representatives. And the said trustee, or his heirs, executors, or administrators, is to convey the said tracts or parcels of land, and slaves, or other property, or interest in

property, or so much thereof, with the appurtenances, as shall be sold at public sale, as aforesaid, to the purchaser or purchasers thereof in fee simple, with warranty against all persons whomsoever.

And the said Benjamin Estill, for himself, and his heirs, doth covenant with the said Lilburn L. Henderson, and his heirs, that he, the said Benjamin Estill, or his heirs, executors, or administrators, will well and truly execute the trust hereby reposed in him, and that on the payment of the debt, interest, and expense of drawing and recording this indenture, on or before the several days of payment in said bonds, then the trustee, his heirs, executors, or administrators, at the proper expense and charges of the said Lilburn, will release to him, or his legal representatives, all demands in law or equity under this indenture.

In witness whereof, the parties to these presents have hereunto subscribed their names, and affixed their seals, the day and year first above written.

L. L. HENDERSON, [L. S.]
BENJAMIN ESTILL, [L. S.]

Signed, sealed, and delivered in presence of
MARCUS C. HENDERSON,
ISAAC BAKER,
JOHN D. MITCHELL,
Pro. as to H——.

At a court continued and held for Washington county, the 23d day of December, 1819, this indenture, in trust, between Lilburn L. Henderson of the one part, and Benjamin Estill of the other part, was proved in court by the oath of John D. Mitchell, a witness thereto, to be the act and deed of said Henderson. It was also proved in the clerk's office of Washington county, on the 19th day of February, 1820, before David Campbell, deputy clerk of the said county, by the oath of Isaac Baker, a witness thereto, to be the act and deed of said Henderson. And at a court continued and held for Washington county, the 22d day of March, 1820, it was acknowledged in court by the said Estill as his act and deed, and the handwrite of Marcus C. Henderson, a witness thereto, was proved in court by the oath of William A. Graham; and thereupon it is ordered to be recorded.

Teste, D. CAMPBELL, *C. C.*

Whereas I have this day assigned to Francis Preston one of the within mentioned five thousand dollar bonds, to wit, the one which becomes due in October, 1820, to secure him in the sum of two thousand seven hundred and thirty eight dollars and sixty-eight cents, which I owe him, as will appear by a deed of trust dated the 1st September, 1819, and therefore do agree that the benefit of the within trust shall first go to secure him the payment thereof, and after having satisfied in the aforesaid sum of $2,738 68, the balance of the said five thousand dollar bond shall enure to me or my heirs; as witness my hand and seal, this 18th Dec. 1819.

WM. P. THOMPSON. [L. S.]

Witness, JOHN MCCHESNEY.

Sept. 30th, 1820. I hereby transfer and assign to James White, his heirs, &c., all my right, title, and interest, and benefits derivable to me, in any capacity whatever, the within deed of trust, for value received, as per article of agreement of the same date herewith.

W. P. THOMPSON.

Teste, HAROLD SMYTH,
JNO. H. MITCHELL.

Credit the within trust with the amount of William P. Thompson's note to L. L. Henderson, payable October 27th, 1819, for $2,278; also for the amount of one horse sold him for $200; also the amount of proceeds of property, as per agreement with executors, $3,312; also the proceeds of sale of mill, &c., to Gen. F. Preston, say $5,000 making in all $10,790.

JAMES WHITE.

Witness, J. H. FULTON.

(F.)

I will take the following amounts, which shall be in full of my claim to the estate of the late William King:

In cash, - - - - - - -	$500 00
Cash by 20th November, - - - - -	300 00
Negroes: Boy immediately, value ———. Balance in negroes, making $2,000, including the above amounts, at 6 and 12 months. at (value) - - - - - -	1,200 00
Wagon and two horses in 3 months, - - - -	300 00
Merchandise, at usual wholesale prices, including saddlery, iron and castings, in 3 months, - - - - -	1,200 00
Mr. Mitchell's plantation in Lee, to be conveyed by L. L. Henderson, at a sum not exceeding - - - -	1,500 00
	$5,000 00

In consideration of the above, I will procure to be made a transfer of all the interest, directly or indirectly, hereafter accruing to Elizabeth Mitchell and William Heiskell in the estate of William King, real or personal, and for this purpose will execute bond, with security in a reasonable sum, not holding myself responsible in any manner for any sum or interest which may or may not be recovered from the said estate by the said Henderson.

WM. HEISKELL.

(G.)

An agreement between James White and Peter Mayo, both of the town of Abingdon, witnesseth, that heretofore, L. L Henderson, by articles of agreement or indenture, dated the 30th October, 1815, between said Henderson, of the one part, and William Heiskell, of the other part, which is herein referred to, purchased of said Heiskell, whose wife Betsey is one of the heirs at law of William King, deceased, all interest which the said Heiskell and wife, of every kind had in the estate of William King, deceased, excepting five thousand dollars, a legacy devised to Betsey in the will of said King, and if the said legacy should turn out to be more than the five thousand dollars, such surplus was also included in said purchase. And after the said purchase, the said Peter Mayo and Alexander Fulton (the latter) of the city of Richmond, became, by verbal agreement, each equally interested with the said Henderson in the purchase aforesaid, in consequence of which the said Henderson did claim of them part of the purchase money, and the said Henderson afterwards transferring the purchased interest aforesaid to William P. Thompson, to secure to him with other property the payment of a debt due him by said Henderson. And the said Thompson

afterwards transferring the said property, so as aforesaid purchased of Heiskell by said Henderson, to the said White in payment of a debt, who is now the owner thereof; and hearing of this verbal agreement between the said Mayo, Fulton, and Henderson, to become each equally interested in the purchase from Heiskell and wife, which was conveyed by them to said Henderson, and the said Mayo and Fulton not having paid any part of the purchase money to Heiskell heretofore, and not being bound to do so, the said Henderson having made the payment himself, said Mayo doth, for himself and his partner, the said Fulton, he being verbally authorized to do so by said Fulton, release to the said White all the interest of him, the said Mayo, and Fulton, in the said purchase by Henderson from Heiskell and wife, and agrees that neither him nor the said Fulton, their heirs, &c., shall ever set up any claim to said purchase. In consideration of which the said White agrees to indemnify and save harmless the said Mayo and Fulton from any charge of the estate of said Henderson, for and on account of the purchase made by him of the interest of the said Heiskell and wife in the estate of William King, deceased.

In witness whereof, the parties have hereunto set their hands and seals, this 23d day of November, 1820.

PETER MAYO, [L. S.]
ALEXANDER FULTON, [L. S.]
by Peter Mayo,
JAMES WHITE. [L. S.]

Teste, THOMAS WILSON,
G. C. WOODARD.

HEISKELL'S ANSWER.

To his honor John Brown, Judge of the superior court of chancery, holden at Wythe court-house:

The separate answer of William Heiskell to the bill of complaint exhibited by James White against this defendant and others. Saving all exceptions, he answereth and saith, that true it is that William King departed this life in 1808, possessed of a very considerable estate; it is also true that the said William King made a will, whereby he devised his real estate, in case he had no children, to William King, son of his brother James King, on condition of his marrying a daughter of William Trigg's and his niece Rachel, wife of said Trigg, in trust for the eldest son or issue of said marriage; and in case such marriage should not take place, the said testator left his real estate to any child, giving preference to age, of said William and Rachel Trigg that would marry a child of his brother James King, or of his sister Elizabeth, wife of John Mitchell; it is also true that the said William King, by his last will, gave to his nieces Elizabeth Findlay and Elizabeth Mitchell, ten thousand dollars in twelve months after marriage, provided they should be then eighteen years of age, if not, at the age of eighteen; it is also true that the testator gave a legacy to each of the children of John Mitchell of one thousand dollars; and this defendant has heard and believes that it has been decided in the supreme court of appeals, that the said Elizabeth Findlay and Elizabeth Mitchell are entitled to ten thousand dollars *each*, by the first mentioned legacy, at the time of marriage, or attaining 18 years of age. This defendant further states, that in the year 1813, he being then about the age of 22, intermarried with Elizabeth Mitchell, the daughter of

John Mitchell, and niece of William King, she being then about the age of 15 years, and he contracted with the said John Mitchell and one William Craig to conduct, as their agent, a mercantile establishment in Lee, purchased goods at Abingdon from William Trigg and L. L. Henderson, and commenced the mercantile business; when that had continued upwards of a year, William Trigg being dead, and John Mitchell infirm, L. L. Henderson came to Lee, and insisted that this respondent should take the mercantile establishment, and this defendant proposed, that if the said Henderson would take pay for the goods purchased for Craig and Mitchell out of the legacy given by William King to this defendant's wife, then he, this defendant, would take the goods; to which the said Henderson (who was executor of William Trigg, who was surviving executor of William King,) replied, "There will be no difficulty on that subject." It was thereupon agreed that this defendant should become responsible for the goods sold to Craig and Mitchell. Soon afterwards the defendant came to Abingdon, and proposed to conclude with the said Henderson the arrangement which had been proposed concerning the legacy given by William King to the wife of this defendant, when the said Henderson declared that he could not make that arrangement, observing that this respondent was responsible for the goods, and should pay for them; the said Henderson had (as this defendant supposes) understood that this defendant was to have a third of the profits of the mercantile business, and therefore resolved to consider him as a partner; for although the goods were purchased under the firm of Craig & Mitchell, they were sold under the firm of Craig, Mitchell, & Heiskell. This respondent therefore became alarmed, and applied to the defendant, Peter Mayo, an attorney at law, and requested his assistance in making an arrangement with the said Henderson for discounting the debt due for the said goods against a part of the said legacy. The said Peter Mayo had professed great friendship for this respondent, and had his entire confidence; to him your respondent stated that he had got into a difficulty, and wished him (Mayo) to make a contract with the said Henderson for this defendant, observing to him that he was intimate with, and perhaps had influence with Henderson, and if he should succeed in making such a contract as this defendant desired, he should be well paid for doing so; to which the said Mayo replied, that he had probably had more influence with the said Henderson than any one else, and asked what this defendant would give for his services; this defendant proposed to give one hundred dollars, which the said Mayo said was too little; but he finally agreed to accept it, and accordingly went to Henderson, and in some short time returned, and said that he could effect an arrangement, provided that this defendant would discount two thousand dollars of five thousand then said to be the amount of the legacy. This defendant refused to make that discount, and the said Mayo observed that the estate of William King was very much involved, and had been badly managed, and that it was uncertain whether the legacies would ever be paid. He then went again to Henderson, and on his return said that Henderson would give three thousand five hundred dollars for the legacy of five thousand, to be paid by discounting the debt due for goods sold to Craig & Mitchell, 500 dollars in cash, and the balance in store goods at an advance of 25 per cent. To this proposition this defendant acceded, and thereupon signed the memorandum marked A. In consequence of the extravagant discount of thirty per cent. for a delay of 18 months, the defendant demurred to paying his agent, Mayo, 100 dollars, who accepted 45 dollars, which was

paid to him by Henderson & Beaty. This defendant further saith, that he had been doing mercantile business at a saltpetre manufactory in the county of Lee, where, occasionally, so many as 150 hands had been employed at the same time, which manufacture being discontinued, this defendant resolved to discontinue his mercantile business, and to engage in agriculture; for that purpose he required land and slaves, and therefore determined to sell the residue of the legacies coming to his wife; and having fallen in with Peter Mayo at Lee court house, communicated his views to the said Mayo, and informed him that this defendant wished him to make another arrangement with L. L. Henderson; the said Mayo having inquired what it was, this defendant informed him that he desired to sell the balance of his legacies to the said Henderson. The opinion had then gained ground that the principal legacy to the defendant's wife was 10,000 dollars. The said Mayo inquiring what his compensation would be, this defendant named a sum, which he believes to have been 500 dollars; the said Mayo then advised this defendant to address to him a note, authorizing him to make the arrangement, and also asked this defendant whether he considered himself entitled to any thing else of the estate of William King besides the legacies; this respondent replied that he did not consider himself entitled to any thing else of the estate of William King but the legacies of 11,000 dollars, given by the will to his wife; the said Mayo then directed this defendant to state that he was willing to dispose of his whole interest. This respondent immediately stepped into a store then at hand, and put his proposition into writing, supposed to be the paper marked F, in its original form, proposing to convey the interest of this respondent and wife, "under the will of the late William King." This respondent is advised that this proposal is altered, and in the hand writing of Peter Mayo, to read "the estate of William King, real and personal" The said Mayo having received the proposition of this defendant, came to Abingdon, and, after a conference with the said Henderson, he addressed to this defendant the letter herewith presented, and marked H, as a part of this answer, by which letter the deep design to defraud your respondent, and the arts practised to effect it, are made manifest. By this letter it appears that the said Mayo had altered the proposition; he advised this defendant *to strike while the iron is hot*, and especially *to keep the subject entirely secret*. In the proposition made by your respondent he had offered to take 5,000 dollars for his claim, when 6,000 dollars in legacies remained to be paid to him; the said Henderson, as appears by this letter, offered 4,500 dollars, and yet talks of sacrifices of his interest, although he was in the receipt of one-third of the profits of the saltworks, which were chargeable with the payment of the legacies. This respondent, after receiving this letter, came to Abingdon, and the agreement was concluded on for the consideration of 5,000 dollars, and your respondent signed the transfer and power of attorney presented by the complainant, and marked C, transferring 6,000 dollars, the residue of the legacies, and such interest as had then accrued, or would accrue on your respondent's wife's attaining 21 years of age, in the estate of William King. In part of the above five thousand dollars, this respondent received five slaves, one of which, named London, was sold to this respondent as 30 years of age, and sound; he was 40 or 45 years of age, had the venereal disease, and was ruptured, in consequence of an aggravation of which latter disease, he died; one of them was a woman named Edy, who had a child, which woman and her children, now four in number, are claimed by one Nelson, who married

a Mrs. Dukes, a daughter of one Archelaus Dickinson, whose widow sold the said woman Edy to the said Henderson. Some time after this defendant had got the slaves, he wrote to Henderson complaining of the diseased state of London, and the said Henderson replied, that if this respondent was tired of the contract he might return all the property, which was not in the power of this defendant, as the said Henderson well knew. This defendant was to get 800 dollars in money, and went home with Mayo to receive it, who paid the residue of that sum to this respondent, after deducting 500 dollars, as this defendant supposes, (but only 300 as the said Mayo affirms,) the allowance to the said Mayo as the agent or broker in effecting the contract. The said Mayo spoke very favorably of the bargain this respondent had made, and produced a paper showing how the estate of William King would pass, and that none of it would go to the children of John Mitchell, except the legacies.

This respondent further states, that the transfer and power of attorney, marked C, was afterwards signed by his wife, who on the 18th day of November, 1815, she being then under the age of 21 years, was privily examined before two justices of the peace of Lee, and assented thereto. This defendant will observe, that he received no compensation for any thing but the residue of the legacies, 6,000 dollars, and allowed on that sum a discount of sixteen and two-thirds per cent., and that in a conversation which he had with Henderson, long afterwards, the said Henderson admitted that he contemplated nothing but the legacies when he made this last contract, but he said that he had bought *a pig in a poke*, and would have all that the contract entitled him to, or to that effect. This respondent further saith, that after his wife had attained the age of twenty-one years, one James Morris came to Lee county, bringing another transfer and power of attorney similar to that marked C, but omitting the words at the conclusion, "on Elizabeth Heiskell's becoming twenty-one years," to be executed by this defendant and his wife. This respondent informed the said Morris that he would not deliver the deed to him; that the deed should be executed; and that this respondent would bring it into Abingdon, and if every thing was right, he would deliver it to Henderson. Accordingly, on the 26th day of October, 1819, this respondent and his wife signed the deed; she was privily examined concerning it, and this respondent afterwards brought it to Abingdon, with intention to deliver it to Henderson; this respondent states that there was no delivery of this deed, either by himself or his wife, to Henderson, or any person for him, and no delivery was intended to be made, unless on your respondent's arrival in Abingdon he should be satisfied, and deliver the said deed to Henderson. On the arrival of your respondent at Abingdon, he met with one Abram Trigg, who said that Mayo, Henderson, and Alexander Fulton, had completely defrauded this respondent; that there was an article of agreement in existence, which showed that those three men were in partnership, when Mayo, acting for this respondent, made the contracts with Henderson. This respondent saw Mayo, who denied the fact, on being charged with it; but on the same evening a copy of the contract between Mayo, Fulton, and Henderson, was shewn to this respondent, who, meeting with Mayo the next day, observed to him that when he, Mayo, was making the contract for the respondent, it was supposed by this respondent that he was acting honestly; to which the said Mayo replied, that he could only say that when he made the contract he thought it a good contract for this respondent. Afterwards the said Hender-

son sent to this respondent for the last mentioned deed, who, finding that he had been defrauded in a most base and treacherous manner, refused to deliver the said deed, and left Abingdon; this deed remains in the possession of this defendant undelivered. A copy of the iniquitous agreement entered into by and between L. L. Henderson, Peter Mayo, and Alexander Fulton, on the 25th of October, 1813, to defraud and swindle the creditors and legatees of William King, and to divide the profits, is herewith exhibited, and marked I. By this agreement the falsehood of the pretence made by Mayo in his release to the complainant, marked G, that *after* the purchase from this respondent, Mayo and Fulton became interested therein by *verbal* agreement, clearly appears; afterwards the said Mayo proposed to return to this defendant the interest which Fulton and himself might claim in the estate of William King by virtue of the contract; he also proposed to give a claim which he held on Rufus Morgan for the amount of the money paid to him as agent for your respondent; these propositions this defendant did not accept, but afterwards, by the advice of counsel, this defendant proposed to the said Mayo that defendant would not, in a bill in chancery which he intended to exhibit, charge the said Mayo with fraud, provided he would re-convey the interest claimed by Fulton and himself, and also could and would, in his answer to such bill, declare that he had nothing in view when he made the contract between this defendant and Henderson more than the legacies given to this defendant's wife by William King's will; this the said Mayo agreed to do, and this defendant was to come from Lee to Abingdon to carry this arrangement into effect; he came after the expiration of several months, when the defendant Mayo said that he had put it out of his power by releasing to the complainant the interest of Fulton and himself. This respondent further saith, that he is not privy to the contracts between L. L. Henderson, Francis Smith, William Thompson, and the complainant; he is advised that the rights of the complainant can be no better than those of Henderson, who knew the treachery of Mayo, because he well knew that Mayo was interested as a purchaser, and yet acted as agent for this respondent; the complainant also is a purchaser, with full notice of the fraud committed on this defendant, for he resides in Abingdon, where the transaction was notorious, and he, the complainant, before he became interested, advised this defendant to give no further confirmation of the contract, saying that *they*, (meaning Henderson, Mayo, and Fulton,) were a set of swindlers, and had swindled this defendant. This defendant saith that the complainant, after his purchase, applied to this defendant and said that he had got this respondent's interest in the estate of William King, and proprosed a compromise; he offered to receive $5,000, supposing that this defendant had received that sum on the second contract; this defendant offered to accede to the proposition, provided that the complainant, on the part of Henderson, would make good the negroes London and Edy and her children, credit $1,500 which this defendant had abated on the first contract, also $45 and $500 (or $300) paid to Mayo for his agency in defrauding this complainant; the complainant declined doing so, and no compromise was made; he then proposed a reference to arbitration, which this defendant declined: and it now remains for this honorable court, which relieves against frauds and conspiracies, protects the unweary, and guards the rights of infants and married women, to give such a decision in relation to those contracts as shall appear to be just; and as Mayo, Fulton, and Henderson, could expect no *aid* from a court of

150

equity in carrying into execution a contract founded in deception and fraud, so neither can the complainant, who stands in their stead, expect any aid from a court of equity. Your respondent would further state, that the real estate of William King being estimated at upwards of $500,000, (his saltworks alone renting at $30,000 per year,) and the children of James King, who was naturalized, and the children of John Mitchell and Elizabeth his wife, (who, having had four children, died before her brother William King,) being generally deemed the only heirs of the said William King, the right of your respondent's wife in the saltworks alone is worth, if the devise of the real estate fails, $62,500; it is therefore to be presumed that no honest man would desire to get such an estate, and also $11,000 in legacies, for the sum of $8,000, or thereabouts, which is all that this defendant has received, while Henderson has actually received $5,000 for one moiety of the larger legacy. This defendant prays to be hence dismissed with his costs.

LEE COUNTY, to wit:

This day William Heiskill personally appeared before me and made oath that the foregoing answer, so far as it relates to his own actings and doings, is true, and that so far as it relates to the actings and doings of others, he believes it to be true. Given under my hand, as a justice of the peace of Lee county, this 22d day of September, 1823.

WILLIAM SAYERS, *J. P.*

(H.)

ABINGDON, *September 22d*, 1815.

DEAR SIR: Mr. Henderson reached home two days since, and I this day laid before him your proposition in relation to your interest in the estate of William King, deceased; he seems particularly desirous to come on terms of compromise with all interested in the estate, so far as it can be done to their satisfaction, without too great a sacrifice and risk on his part; his great desire seems to be to promote the interest and satisfy the minds of those interested, and will, for this purpose, not regard an inconsiderable sacrifice of his own interest. I think your propositions in the main will be acceded to, but the amount required in money to be *charged* to negroes payable at valuation in six and twelve months, and a reduction of the amount so as to reduce it to $1,500; the land he will give at whatever it will cost him; you limit it to $1,500; I apprehend it may be got of Mitchell for that, and perhaps less; he will also, perhaps, prefer putting in four horses instead of two, which I suppose will make no material difference to you; he proposes the negroes at *valuation; Joe* he will not part with. Henderson says your letter was not explicit enough as to your interest; it did not set forth with sufficient certainty what was to be disposed of; in my explanation of it to him, I told him I understood it to be intended as a transfer of all your interest, directly or indirectly, and of every description, to the estate of William King, by virtue of your intermarriage with Elizabeth Mitchell; that although it was not so expressed in the letter, it was, as I understood you in conversation. Mr. Henderson prefers that you would empower me, by special power of attorney, to act for you; this would perhaps be preferable to all parties; in which you must authorize me to sign an agreement with him on the subject, and you must state specially whether my exposition of

your intention is, or is not correct, as to your transfer of your interest to the estate; for want of this power and such certainty as to the nature of the transfer as I have mentioned, he declined saying much on the subject, but gave to understand, by way of loose conversation, that he would do as I have stated on the other side. As I wish to be clothed with ample power to negotiate, and that he himself should be satisfied with my authority, *beyond a doubt*, and further that we should perfectly understand the nature of the transfer, I have availed myself of the first opportunity to advise you, that you may do in it what you deem best; no time should be lost, and "the iron struck while hot." Do not leave any thing discretionary with me, but state positively and unequivocally whether I am to insist on the terms already mentioned, or whether to accede to those suggested by him. He is a determined man, and perhaps sometimes and in some matters whimsical. I therefore recommend that if you are anxiously disposed to sell, that you take this offer sooner than not sell; it does not differ more than perhaps $500 from the offer by yourself. You must recollect this or any other communication from [erased] subject is to be kept entirely to yourself as well on my own account as of Mr. H., to whom I have, on your behalf, made the promise. As soon as I get your answer, and can close the negotiation, I will write you that you may come on.

Yours with respect,

PETER MAYO.

(I.)

An agreement entered into this 25th day of October, and year of 1813, between Lilburn L Henderson, of the county of Washington, and State of Virginia, of the one part, and Alexander Fulton, of Henrico, and Peter Mayo, of Washington county, and State aforesaid, of the other part, witnesseth, that whereas the said Lilburn L. Henderson has been, by the last will and testament of William Trigg, deceased, appointed his executor, by virtue of which he is legally entitled to the administration of the unsettled estate of William King, deceased, on which estates he intends to take out letters of administration, and apprehending that he will not have leisure to perform all the duties appertaining to both estates, he has covenanted, and by these presents doth covenant and agree, that in consideration that said Fulton and Mayo will undertake and assist him in the management and settlement of them, that they shall be entitled to an equal share of the profits arising on the management of the estates, whether on the receipts or disbursements of money, and also an equal share in all other advantages that may occur or accrue in any wise whatsoever therefrom, except as is hereafter provided; that is to say, the said Mayo one-third, the said Fulton one-third, and the same is reserved to the said Henderson. And the said Henderson doth further covenant and agree, that whenever it is necessary to employ a collector to receive, by suit or otherwise, the debts due the estates of said Trigg and King, deceased, the said Mayo shall have the right of doing so should he think proper to undertake it, or any part thereof; that the said Henderson will put all such claims into his hands for such purpose, whether in the State of Virginia or elsewhere, and will allow him the usual fees for the same; but all commissions arising from the same, and usually claimed by attorneys, are to be the joint interest of the parties. And the said Henderson doth further covenant and agree, that in case of his death before the settlement of the estate of William King, that he will appoint and make

157

either one or both of the within contracting parties his executors, so as to enable them to go on with the settlement of the said estate. And further, that he will not concern or meddle with the estate of William King, except so far as he is advised with said Mayo and Fulton, unless it is for their mutual interest and absolutely necessary, but will leave the whole and entire control of the same to the said Fulton and Mayo; and more particularly, that he will not do any act that may by any means render liable the parties to a devastavit or other legal injury. And moreover, that in case he shall at any time be disposed to abandon any interest which he may have by way of commissions or otherwise in relation to either of the estates, that then the said Fulton and Mayo shall be entitled to an increased interest in the balance of commissions, so as to indemnify for their release in such case made by said Henderson. And the said Fulton and Mayo, on their part, do covenant and agree with the said Henderson, that they will endeavor, to the utmost of their abilities, to aid and furnish the said Henderson with security to the estate of William King; that they will bear an equal proportion of all expenses necessarily incurred in the management and settlement of both estates; that they will not interfere with said Henderson in the settlement and management of the estate of said Trigg further than he chooses to advise with them; and it is distinctly understood by all the parties, that the said Henderson is to have all the benefits from the appropriation of all the funds belonging to the estate of William Trigg for the special benefit of himself and the heirs of William Trigg, and that he is at all times to make such use and appropriation of the said funds of the said Trigg's estate, at all times, as he shall think proper, and the interest and emolument arising therefrom is for his own individual benefit and the heirs of William Trigg, except the commissions allowed him by court for settling said estate, which are to be equally divided among the parties, and said Fulton and Mayo are to have no interest whatever in said Trigg's estate but said commissions above stated; that the said Fulton and Mayo will not do any act by which the said Henderson or his securities may be subject to loss or liable to devastavit, and they will in all cases endeavor to conduct the business in such manner as shall be most to the interest of all parties. And the said Henderson doth further agree and covenant, that if the said Fulton and Mayo should not be able to make out the whole of the security, that he will, as far as convenient, assist them in so doing. And it is further understood and agreed, that the books and papers appertaining to the said estates of the said Trigg and King, are to be kept in Abingdon, Virginia, or at such place or places as may be mutually agreed on by the parties, and the same are to be at all times open and free for the inspection of all or either of the parties or their agents. And further, that they do all covenant and agree, one with the other, that they will so conduct the business as to render it agreeable and to the interest of each other, having due regard to the said Henderson's executorships and its responsibilities; and should there be any difference of opinion in relation to the matters herein contained, that it shall be determined by a majority of the contracting parties. And the said parties do further covenant and agree, that all debts or legacies, or other interests in the said estates, purchased on speculation or otherwise, or any advantages arising from commissions or other means appertaining to the said estates, shall be for the mutual benefit of all the parties herein concerned, and all funds coming into their or either of their hands from the saltworks, being the proceeds thereof since the death of William Trigg, are to be appropria-

ted for the mutual benefit of all. And the parties do lastly pledge their honors, one to the other, that they will conduct the business in harmony and concord, and do hereby, for the true and faithful performance of their several within covenants, bind themselves one to the other, their heirs, executors, administrators, in the penal sum of $50,000. Given under our hands and seals the day and year above written.

L. L. HENDERSON, [SEAL.]
ALEXANDER FULTON, [SEAL.]
PETER MAYO, [SEAL.]

A copy of the original.

ELIZABETH HEISKELL'S ANSWER.

To his honor John Brown, Judge of the high court of chancery, holden at Wythe court-house:

The separate answer of Elizabeth Heiskill to the bill of complaint exhibited by James White. Saving all exceptions, she answereth and saith, that she cannot speak of her own knowledge of the contracts entered into by William Heiskell, her husband, with Lilburn L. Henderson, and therefore she refers of her said husband's answer for an exhibition of them. She admits that she signed and acknowledged two deeds of conveyance respecting her interest in the estate of William King, purporting to convey the same to L. L. Henderson; one before she became of full age, and the other after; that she never actually delivered either of the said deeds to Lilburn L. Henderson, or to any other person to be delivered to him: that she was and is unacquainted with legal forms and with the extent of her rights, which she trusts this court will guard and protect. She prays to be hence dismissed with her costs.

LEE COUNTY, *to wit*:

This day Elizabeth Heiskell personally appeared before me, a justice of the peace for the said county, and made oath, that the foregoing answer is true. Given under my hand this 22d day of September, 1823.

WILLIAM SAYERS, *J. P.*

MAYO'S ANSWER.

To the honorable John Brown, Judge of the superior court of chancery, holden at Wythe court-house:

The answer of Peter Mayo to the bill of complaint exhibited in this honorable court by James White against this respondent and others.

This respondent, saving to himself the usual exceptions, for answer to the said bill or so much thereof as he is advised is necessary for him to answer, answereth and saith, that he admits the execution of the paper exhibited with the plaintiff's bill, marked G.

This respondent deems it necessary to a fair exposition of the circumstances out of which the said paper arose, as well as to repel the false representations of his conduct which have been made by his co-defendant, William Heiskell, to present to this honorable court a full statement of all the circumstances connected therewith, so far as his recollection at this distant period will enable him. In the year 1814, in March, as this respondent believes, the said Heiskell was in Abingdon. He entered into a negociation with Lilburn L. Henderson, to sell him a legacy of five thousand dollars, which was bequeathed to his wife by the will of William King. The said Heiskell

158.

carried on the negotiation personally with the said Henderson, and this respondent does not recollect that he acted as the representative of the said Heiskell, in attempting to bring about the contract. This respondent believes he was consulted by the said Heiskell, as to the condition of William King's estate, and he thinks he expressed himself in a manner which conveyed the idea that it was doubtful whether the legacies would be paid. This opinion was the result of what this respondent knew, and had heard on the subject; it was candidly and honestly given, under the fullest conviction of its truth, and corresponds, as this respondent believes, with the opinion of most persons at the time. The contract was finally concluded on between said Heiskell and Henderson. In it this repondent did not consider as having any interest or benefit whatever. He never contributed one cent; on the contrary, it was Henderson's property and money, as far as this respondent knows, that paid for the legacy, and this respondent never claimed any benefit therefrom whatever. This respondent does not believe that he made any contract with said Heiskell, to aid him in making the said contract for any specific compensation. He wrote the different papers executed by the parties on the day the contract was closed, for which, and his opinions and assistance connected with the negotiation, the said Heiskell gave this respondent a coat pattern. This respondent in 1815, perhaps in August, was in the county of Lee. The said Heiskell then applied to him to inquire whether Henderson would not purchase the remaining interest which his wife had in William King's estate. This respondent answered that he could consult him, and requested the said Heiskell that if he wished this respondent to do so, to put his proposition on paper. This the said Heiskell did, and wrote the paper exhibited by the plaintiff, marked F, except the interlineations. The said Heiskell at the same time offered to this respondent, that he would pay him three hundred dollars if he could effect the contract. On this respondent's return he conversed with Henderson on the subject, and having ascertained in some degree the said Henderson's sentiment, this respondent wrote to the said Heiskell the letter filed with his answer, dated the 22nd of September, 1815. The facts stated in that letter were true, according to this respondent's belief, and the opinions therein expressed were his candid and unbiased opinions. This respondent requested the said Heiskell to keep the subject a secret, because the said Henderson had requested it, and this respondent had promised him that it should be, and this respondent did not wish, situated as he was, to offend him. This respondent does not recollect that he had any further negociation with the said Henderson, or that he received any communication from the said Heiskell in answer to said letter. During the ensuing month of October, the said Heiskell came to Abingdon, when, through the instrumentality of this respondent, the contemplated contract between the said Henderson and Heiskell was closed, and committed to writing and signed by the said Heiskell. This writing is the paper exhibited with the plaintiff's bill, marked C; the paper was taken by the said Heiskell to Lee county, as this respondent believes, where, on the 18th of November following, the privy examination of his wife was taken, and transmitted to the said Henderson. At the date of this agreement, it was the general opinion, that the wife of the said Heiskell was entitled to a legacy of six thousand only. The question whether any part of the real estate would descend to her, was then, and still is doubtful, so much so that William King, son of James King, the devisee in the will of William King, now claims the whole real estate under the will, and a suit

has actually been instituted by him on the advice, as this respondent has heard, of the very counsel who drew the said Heiskell's answer, in which a most exaggerated statement of the interest transferred to Henderson is contained. And as to the claim of the legacy, the decision of your honor in Joseph Trigg's case, under the same clause of the will, shews the doubtful character of the claim. It is admitted by this respondent that the interlineation in the paper, marked F, is in the hand writing of this respondent. When it was made, this respondent does not recollect; but the insinuation that it was made with a fraudulent intent, manifests not only the extreme of malignity, but of folly. That paper, in the three first lines written by the said Heiskell, shows that it was his intention to sell all his claims in the estate of William King. The letter of the 22nd of September, 1815, exhibited with the said Heiskell's answer, shews that those concerned so understood it, and the paper of the 31st October, 1815, executed by the said Heiskell on the fullest deliberation, in which the interests intended to be conveyed are specially enumerated, contains the most conclusive evidence that the alteration imputed was in conformity with the said Heiskell's consent. The contract made between the said Heiskell and Henderson was for the exclusive benefit of the said Henderson at the time it was made. This respondent did not consider himself to be directly or indirectly interested in its benefits or burthens to the amount of one cent. He contributed no part of the payments, and claimed no part of the interest acquired. In carrying on the negotiation, this respondent acted with the utmost fidelity, and in any opinion or advice he gave, with the utmost candor, not seeing the most distant expectation of being benefitted by any thing connected with the contract, except the compensation expected from the said Heiskell. It is true that some time afterwards the said Henderson proposed to this respondent to let him have it on the terms he had taken it; this respondent replied that he had given too much for it; besides this respondent said he could not pay for it. The said Henderson replied that he could take it in commissions to which the respondent might be entitled. This respondent said he could take a part of it, but no writing was executed, and nothing was further said upon the subject. The said Henderson finally conveyed the whole in trust, as stated in the bill. It is also true, that this respondent was a party to an agreement entered into between the said Henderson, Alexander Fulton, and this respondent, dated October , 1813, a copy of which is exhibited with the defendant Heiskell's answer. Though this respondent regrets that he ever became a party to such an instrument, yet he explicitly denies that he had any improper intention, or that, under it, he did any improper act. He was young and inexperienced at the time, and could be easily persuaded. In relation to the subject of purchasing legacies and debts, the object was this. There was a considerable fund which had arisen from the products of the saltworks at that time, not considered subject to the payment of William King's debts. Of this fund, a considerable part was expected to come into the hands of the said Henderson, which, by the said agreement, it was intended to use in speculations. Arrangements were soon afterwards made, by which this fund was otherwise applied. The consequence was, that there never was any legacies or debts purchased on joint account; so far from it, that the said Henderson afterwards purchased Connally Findlay's legacy for $10,000, and Hannah Allen's, as this respondent understood, for himself. He enjoyed the sole benefit, and paid the consideration. After the said Heiskell discovered that the agreement of the day of October

139.

had been executed, he appeared dissatisfied. This respondent then offered to him, to transfer to him all the interest which he might have in any manner whatever. But he made various difficulties, and would not receive it. When Col. White, the complainant, acquired the interest, as stated in the bill, this respondent transferred to him whatever interest he might have in it, without having received any consideration therefor, or expecting any. The motive which induced this respondent was, that the said Heiskell might get it; Col. White having promised that he would offer to him to rescind the contracts, which this respondent believes was made, but which the said Heiskell refused to accede to. In the offer he made, and in the transfer to White, this respondent was governed by a desire to obviate every possible censure or complaint. This respondent, further answering, saith, that when the said Heiskell came to Abingdon with the second deed, ready executed in his pocket, and after he had discovered the existence of the agreement of October, 1813, he proposed to Henderson that if he would give him a negro girl, he would deliver him the deed. The said Henderson, however, refused to do so. This respondent prays to be hence dismissed with his costs, &c.

WYTHE COUNTY, sct.

This day came Peter Mayo before me, the subscriber, a justice of the peace for said county, and made oath that the facts stated in the within answer, so far as they are stated as of his own knowledge, are true, and so far as they are stated on the information of others, he believes them to be true. Given under my hand this 26th October, 1825.

JOSEPH CROCKETT.

Plaintiff's exhibits, omitted.

(4.)

On the fifteenth day of November next, I promise to pay unto Wm. P. Thompson the just and full sum of two thousand dollars, to be discharged in a good wagon, harness for a team, and the said Thompson agrees to allow the said White a liberal price for the same, and if the parties disagree as to the value, to select two persons to value the same upon the same principles; as witness my hand and seal this 1st day of October, 1820.

JAMES *(name torn off.)*

Teste, HAROLD SMYTH.

Endorsed.—This note is entitled to a credit, for a note said White holds on me unsettled. W. P. THOMPSON.

(5.)

$1000.

On or before the 14th day of February, one thousand eight hundred and twenty-one, I promise to pay, or cause to be paid, unto Wm. P. Thompson, his heirs or assigns, the just and full sum of one thousand dollars, current money of Virginia, for value received: to the true payment whereof, I bind myself and heirs. Witness my hand and seal, this 30th day of September, one thousand eight hundred and twenty.

JAMES *(torn off.)*

$500.

On or before the 14th day of February, one thousand eight hundred and twenty-one, I promise to pay, or cause to be paid, unto Wm. P. Thompson,

his heirs, or assigns, the just and full sum of five hundred dollars, (in current bank notes) for value received: to the true payment whereof, I bind myself and heirs. Witness my hand and seal, this 30th day of September, one thousand eight hundred and twenty.

JAM *(torn out.)*

Teste, HAROLD SMYTH.

(Not referred to.)

Know all men by these presents, that I, William Heiskell, of the county of Lee, and State of Virginia, for and in consideration of the sum of five thousand dollars, to me this date in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and by these presents transferred to L. L. Henderson, for the consideration aforesaid, all the right, title, and interest which I have, as the husband of Elizabeth Mitchell, and her interest to the sum of five thousand dollars, being part of the legacy left the said Elizabeth Mitchell, by William King, deceased, in his last will and testament, hereby transferring the to said Henderson, all the interest which I may or shall have, as the husband aforesaid, to the claim of five thousand dollars aforesaid, only to enjoy to himself, the said Henderson, all the advantages and emoluments that may arise from the same from this date, and further hereby guaranty that my said wife, formerly Eliza Mitchell, shall, within a convenient time, transfer all her interest to the same, should the said Henderson require it. In witness whereof, I have hereunto set my hand and seal, this 8th day of March, 1814.

WM. HEISKELL, [L. S.]

Teste, PETER MAYO,
JAMES MORRIS.

An agreement made this 20th day of July, 1827, between James White, of the town of Abington, Virginia, of the one part, and William Heiskell, of the county of Lee and State aforesaid, of the other part, witnesseth, that by the last will of William King, deceased, legacies were devised to Elizabeth Mitchell, now the wife of said Heiskell, who, being the niece of said King, is also one of his heirs at law. And it is questionable whether the devise in the will of said King to William King, son of his brother James, of his saltworks, &c., is not too contingent and remote, and therefore whether said W. King, deceased, did not die intestate, as to his saltworks, &c., which in that event descended to his heirs at law, of whom the said Elizabeth Heiskell is one. In this state of things, Lilburn L. Henderson, executor of William Trigg, who was the surviving executor of William King, deceased, purchased of said Heiskell, the legacy aforesaid, one of which was at the time of purchase doubtful, whether it was a legacy of five thousand dollars or ten thousand dollars, though since ascertained by a decision of the court of appeals to be the latter sum; and the said Henderson having also purchased from said Heiskell, as he contended, all said Heiskell's interest in right of his wife, as an heir at law of said King, which the said Heiskell and wife conveyed, as well as the legacies aforesaid, she being then under age, and a new deed of conveyance therefor, after she attained age, having been prepared and executed by Heiskell and wife, though not delivered, the said Heiskell discovered, as he alleges, much fraud in the purchases aforesaid, and refused to deliver the deed or make any new conveyance; and the said Henderson having become insolvent, conveyed his said purchases from Heiskell and his wife, with other property, in trust, to secure to

160.

William P. Thompson a large debt due him, who afterwards sold to said White, for a valuable consideration, all his interest in said trust, which was afterwards executed by the trustee, the property sold, according to terms of the trust, and purchased by said White, who immediately commenced suit in the superior court of chancery at Wythe court-house against said Heiskell and wife, for a conveyance of their interest in said King's estate. The defendants, Heiskell and wife, answered the bill, and filed the last conveyance, which had been refused to be delivered, contending that it was delivered by the said Elizabeth to her husband, to be delivered to Henderson, if, on his arrival in Abingdon, he found every thing relating to their contracts right, and also contending that, on his arrival, he discovered the fraud complained of in his and her answer. William King, the devisee, in the mean time, brought his suit in the district court of the United States at Wythe, for some of the real estate devised to him, and obtained a decree therefor, from which there is an appeal now pending in the Supreme Court of the United States, which will settle the question as to whether William King died intestate as to his saltworks and real estate, and whether it descends (after the termination of the life estate by his will devised,) to his heirs at law. The suit of White against Heiskell and wife being still pending and undetermined, and the parties wishing an amicable adjustment thereof, have come to the following agreement, viz:

The said White agrees to pay to said Heiskell, in addition to what he has received for the said legacies and interests in the real estate of said King, fifteen hundred dollars' worth of salt on demand, delivered at King's saltworks in Washington county; fifteen hundred dollars' worth of salt delivered at same works in twelve months from this date; twenty-five bushels of salt annually, for five years from this date, delivered at Goose creek saltworks, in the State of Kentucky, and two twenty-five dollar saddles delivered at Abingdon, when applied for, in a reasonable time hereafter. In consideration of which, the said Heiskill and wife will confirm the several contrsacts made with said Henderson, by which said Heiskell now agrees that all the interest of himself and his wife Elizabeth, as well in the legacies aforesaid as in the estate, real and personal, of William King, deceased, such as it shall vest in the said White, for which purpose he and wife will re-acknowledge the last deed prepared for Henderson, and filed with their answers in the suit between said White and them, if that shall be found sufficient; if not, they will make to said White, when demanded, a new deed, by which all interest of said Heiskell and wife, in and to the estate, real and personal, of William King, deceased. and to the legacies aforesaid, shall pass from said White, and to his heirs for ever; but Heiskell and wife will not be responsible for the quantum of said estate, nor answerable for the result of William King, the devisee's, claim under the will to the whole real estate; all that said Heiskell and wife undertake to convey to said White in relation to said estate, is their interest, whatever it may be, to the legacies and estate aforesaid, which said White agrees to accept. And the parties further agree, that at the next term of the said superior court of chancery, a decree shall be entered by consent, pursuant to their agreement; the said Heiskell and wife will not be answerable to said White for any claims which Henderson's representatives, or others, may set up to the interest, herein mentioned, under the several contracts made between Heiskell and him as aforesaid. It is further agreed by parties, that each party will pay

his own costs in the suit aforesaid, which shall be decreed by the court. In witness whereof, the parties have hereunto set their hands and seals, the day and year first above written.

JAMES WHITE, [L. S.]
WM. HEISKELL. [L. S.]

Sealed and delivered in presence of
ANDREW RUSSELL,
B. ESTILL,
C. S. BECKEM.

A copy. Teste,

J. E. BROWN, *C. C.*

The following is a copy of the appeal bond in this case.

Know all men by these presents, that we, William King, Charles C. Johnston, and Benjamin Estill, are held and firmly bound unto James White in the penal sum of three hundred dollars, lawful money of the United States, to which payment well and truly to be made to the said James White, his heirs, executors, administrators, or assigns, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this 24th day of September, in the year of Christ 1830.

The condition of the above obligation is such, that whereas the said William King hath prayed an appeal to the Supreme Court of the United States, from a decree pronounced in the district court of the United States for the western district of Virginia, held at Wythe court-house, on this day (Sept. 24th, 1830,) in a suit therein depending, wherein he was plaintiff and the above named James White was defendant, by which his bill was dismissed: Now if the said William King shall prosecute his said appeal with effect, or shall satisfy and pay all such costs as shall be awarded against him in case the decree aforesaid shall be affirmed, then the above obligation to be void, else to remain in full force and virtue.

WM. KING, [L. S.]
CHS. C. JOHNSTON, [L. S.]
B. ESTILL. [L. S.]

I, John Foster, deputy, for Jasper Yates Doddridge, clerk of the United States' court for the western district of Virginia, held at Wythe court-house, do hereby certify, that the foregoing contains a true copy of the proceedings had, and papers filed, in the cause therein mentioned.

In testimony whereof, I have hereunto subscribed my name, and affixed my seal, this 8th day of February, 1831.

JOHN FOSTER, *D. C.* [L. S.]

I further certify, that an appeal bond has been duly executed in court in this case.

JOHN FOSTER, *D. C.*